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THE

SOLICITORS' JOURNAL

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CURRENT TOPICS

Nominations and Bequests

WE are indebted to the current number of the *Journal of the Law Society of Scotland* for a report of a case in which the LORD PRESIDENT made some observations on the effect of nominations made under statutory rules. The case, brought by the executors of Mrs. Mabel Rushforth or Clark, was decided on 22nd July, 1960. Amongst other regulations so providing, the Savings Certificates Regulations, 1933 (S.R. & O. 1933 No. 1149), prescribe a procedure whereby a holder of national savings certificates, who is of or over the age of sixteen, may nominate the persons upon whom his interest in the certificates held at his death shall devolve. In 1939, Mrs. Clark had so nominated one of her three children to receive such certificates belonging to her at the time of her death. In 1956 she executed a will leaving her whole estate to be equally divided between her three children. The will did not contain an express revocation of prior testamentary writings. The question at issue was whether the son nominated to receive the certificates was entitled to them in addition to his one-third share of the estate or whether they should be regarded as part of his one-third share. It was held that he was entitled to the certificates in addition to his one-third share of the estate because the 1939 nomination constituted a special destination in his favour which had not been revoked by the 1956 will. Regulation 15 of the 1933 Regulations prohibits revocation of a nomination by any " act, event or means whatsoever " other than by the methods there prescribed, which include that of completion of a notice of revocation approved by the Postmaster General and lodging it with him. It was argued that as no such notice had been given by Mrs. Clark nothing she might have done by express revocation, however precise, in her subsequent will could revoke the nomination. Upon this the Lord President observed that, if correct, it would involve a substantial interference with the freedom of testators to dispose of their property as they wished and he was not satisfied that there was any justification for such a sweeping interpretation of the regulation. Similar provision is made by reg. 22 of the Post Office Register Regulations, 1925 (S.R. & O. 1925 No. 788), under which a testator may dispose of securities worth far more than the maximum individual permitted holding of national savings certificates. The facility thus available to infants over fifteen to dispose of property was described at 102 SOL. J. 116. Whilst agreeing that the inability to revoke a nomination by a subsequent will might well prove inconvenient, particularly to a testator abroad, we should not be surprised if the propounded effect of the regulations were upheld. The Saving Certificates Regulations, as well as permitting infants over fifteen to make nominations, specifically authorised them to give valid receipts ' notwithstanding any rule of law to the contrary " (reg. 17 (3)).

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Hire-Purchase Advertisements

THE Advertisements (Hire-Purchase) Act, 1957, makes provision as to the information to be included in advertisements displayed or issued in connection with hire purchase if such advertisements include any one or more of the following elements, viz., an indication that a deposit is payable; words indicating that no deposit is payable; an indication of the amount of any one or more of the instalments payable (s. 1 of the 1957 Act). Any advertisement to which the Act of 1957 applies must include all the information required by the Act, including the amount of the deposit, if any, and the amount of each instalment, and each part of that information must be "displayed clearly in the advertisement, in such a way as not to give undue prominence to any part of it in comparison with any other part" (s. 2 (1) of the 1957 Act). Section 3 (1) of the 1957 Act stipulates that, subject to the provisions of that section, any person who displays or issues an advertisement in contravention of the provisions of s. 2 of that Act, or causes an advertisement to be displayed or issued in contravention of those provisions, shall be guilty of an offence, and there have been two recent prosecutions under this statutory provision. At Bow Street Magistrates' Court it was conceded that a newspaper advertisement in respect of an electric washing machine contained all the information required by s. 2 of the Advertisements (Hire-Purchase) Act, 1957, but the company which had issued the advertisement was convicted of an offence under s. 3 of that Act as it had given "undue prominence" to the amount of the weekly instalment. Similarly, at Old Street Magistrates' Court, a company was fined for giving "undue prominence" in advertisements in national newspapers to the amount of deposits payable.

Non Est Factum

IN *Carlisle and Cumberland Banking Co.* v. *Bragg* [1911] 1 K.B. 489, the Court of Appeal decided that where a person is negligent in signing his name without ascertaining what he is signing, the plea of *non est factum* may nevertheless be available to him against an innocent third party who has acted to his loss upon the document which he has signed. Their lordships conceded that this rule did not apply in the case of negotiable instruments (see *Foster* v. *Mackinnon* (1869), L.R. 4 C.P. 704), but the principle enunciated in *Bragg's* case has been the subject of severe criticism: see, e.g., The Law of Contract, by Cheshire and Fifoot, 5th ed., p. 207, and Anson's Law of Contract, 21st ed., p. 144. The point arose in *Carlton and United Breweries, Ltd.* v. *Elliott* [1960] V.R. 320, a recent case in the Supreme Court of Victoria. One Flanagan persuaded the defendant to sign a guarantee by fraudulently telling him that it was a business reference. The document signed by the defendant guaranteed payment by Flanagan to the plaintiff brewery company in respect of such quantities of goods as the plaintiffs might from time to time supply to him and it was found that the defendant did not know that the document he was signing was a guarantee, that he did not intend to sign a guarantee and that he was guilty of negligence in signing it. GAVAN DUFFY, J., thought that he was bound by the decision of the Court of Appeal in *Bragg's* case, which, in his lordship's view, was clear authority for the proposition that the defendant's negligence in signing the document was immaterial. His lordship concluded, therefore, "that any negligence in the defendant was for present purposes immaterial, and he is entitled to rely on *non est factum* and there must be judgment for him in this action." Distasteful though it may be, it would seem that an English court would have been compelled to reach the same decision. One day, no doubt, the House of Lords will have occasion to consider the matter and then *Bragg's* case may be overruled.

Insulting Words and Behaviour

IN a recent case at Romford it appeared that because the dog that he had backed was losing a man jumped on to the greyhound track and tried to throw a raincoat over the leader of the race. He missed the first dog, but caught the second and fell to the ground and struggled with it. The race was declared void and other punters took the law into their own hands and surrounded the man and kicked him to the ground. However, that was not the end of his punishment as he was charged with and convicted of using insulting words likely to cause a breach of the peace. It would seem that the prosecution was brought under s. 5 of the Public Order Act, 1936, which provides that: "Any person who in any public place . . . uses threatening, abusive or insulting words or behaviour . . . whereby a breach of the peace is likely to be occasioned, shall be guilty of an offence." It is feasible that a greyhound track is an "open space to which, for the time being, the public have or are permitted to have access, whether on payment or otherwise" (ibid., s. 9) and, although s. 5 of the 1936 Act does not apply "to the well-known custom of the passing of unpleasantries from one neighbour to another on their own premises" (per CASSELS, J., in *Wilson* v. *Skeock* (1949), 113 J.P. 294), there appears to be no reason why it should not apply to such a case as this.

"Precincts" of the Court

IN August, 1959, we drew attention to a case in the Bradford City Court in which a man was fined for taking a photograph in the court-room (see "Photographs in Court," 103 SOL. J. 642), but in a recent case at the Salisbury Magistrates' Court a press photographer was convicted of an offence under s. 41 of the Criminal Justice Act, 1925, in respect of the taking of a photograph of a person charged with murder as that person was being taken down the steps of the court to a waiting car. The person charged with murder was "a party to . . . proceedings before the court" within s. 41 (1) of the 1925 Act and, although the photographer took the photograph from a public square, it was a photograph of that person taken while he was leaving the court-room or "precincts of the building in which the court is held" within s. 41 (2) (*c*) of that Act. So far as we are aware, the term "precincts" has never been judicially defined, but in *Chatburn* v. *Manchester Dry Dock Company, Ltd.* (1949), 83 Ll. L. Rep. 1, SOMERVELL, L.J., said: "The word 'precincts' . . . is an ordinary English word with which we are familiar and . . . if the word is a familiar word which one knows in ordinary usage, a dictionary does not really help. The dictionary is of assistance if one is not sure as to the meaning of the word, and then the dictionary, by giving its meaning in other words, helps." In that case the Court of Appeal decided that a trawler was not within the precincts of any yard or dry dock within s. 151 (1) (i) of the Factories Act, 1937, when it was moored in the Manchester Ship Canal against a jetty.

JURISDICTION OVER FOREIGN TORTS—I

THIS short series of articles is concerned with some of the most important problems which affect the exercise of jurisdiction over tortious acts committed abroad. These problems assume every year greater difficulty and greater significance because of the steadily increasing number of British businessmen, travellers and tourists who have occasion to journey beyond the territorial confines of the normal jurisdiction of our own courts. The question to be answered is, in its simplest form: when do the English courts assume jurisdiction over foreign torts in the case of actions commenced in England in respect of personal torts committed abroad? In order to answer this question it is necessary, at the outset, to consider the precise relationship between the *lex loci delicti commissi* (the law of the country where the allegedly tortious act was committed) and the *lex fori* (the law of the country where the proceedings take place—in this case the law of England). This relationship is governed by certain much-criticised English rules of the conflict of laws which, in their turn, raise some controversial issues as to the actionability or justifiability of the tort, the determination of the "place of the wrong," damages, defences, etc. In this first article the relative importances of the *lex loci* and the *lex fori* will be considered, since whether an act done in a foreign country is or is not a tort (an actionable wrong in England) will depend upon the combined effect of the two laws.

We can start with the proposition that English courts will assume jurisdiction if the act complained of was not *justifiable* according to the law of the place where it was committed (*Phillips* v. *Eyre* (1870), L.R. 6 Q.B. 1) and would have been actionable if committed in England (*The Halley* (1868), L.R. 2 P.C. 193). To this should be added the qualifications that (i) the act complained of need not be actionable according to the *lex loci*, (ii) that subsequent foreign legislation may make lawful an act not originally justifiable according to the *lex loci*, (iii) that, in general, the nationality of the litigants is not material, and (iv) that an ouster of English jurisdiction is only achieved if there is shown to be an exclusive foreign jurisdiction.

The *lex loci delicti commissi*

Delictual liability is governed in many continental countries by the *lex loci* and this rule is often applied to all torts, wherever they were committed. English law has accepted neither the rule nor the consequence. Certainly, if an entire tortious act is committed in England, then English law—the law of the *lex loci*—will be applied, although some aspects of foreign law may have relevance to the issue. Insistence upon the *lex loci* is only complete and unqualified in cases where everything is shown to have happened in England. The recent decision in *Szalatnay-Stacho* v. *Fink* [1947] K.B. 1, is instructive; this was an action for alleged defamation by the publication of a letter written by the defendant, who was in 1941—at the time in point—the General Prosecutor of the Czechoslovak Military Court of Appeal in Britain. The letter had been sent to the President of the Czechoslovak Republic, then in exile in London, and had been published in Britain. The plaintiff (who in 1941 had been the Czechoslovak acting minister in Cairo) was met by the defence that, according to Czech law, the communication was absolutely privileged and that the comity of nations obliged an English court (the Court of Appeal) to give effect to the foreign law concerned. The court, however, held that the comity of nations neither compelled nor entitled it to apply Czech law to acts done in this country which were the subject of proceedings in tort between Czech citizens. On the ground that the statement was published in England, whether or not it was an actionable libel must be determined entirely by English law: Somervell, L.J., went so far as to say (at p. 12):—

> "If there is to be such an application of foreign law in the circumstances set out, it would, in our opinion, have to be expressly provided for by legislation."

The proper place of the *lex loci*, in English eyes, is in relation to the question of the justifiability of the act. In the leading case of *Phillips* v. *Eyre*, *supra*, Willes, J., declared (at p. 28) that:—

> ". . . the civil liability arising out of a wrong derives its birth from the law of the place, and its character is determined by that law. Therefore, an act committed abroad, if valid and unquestionable by the law of the place, cannot, so far as civil liability is concerned, be drawn in question elsewhere unless by force of some distinct exceptional legislation. . . ."

It would seem obvious that the *lex loci*, in giving this character to its civil obligations, should determine not only their existence but also their content and their extent. Yet, according to English law, actions for torts alleged to have been committed outside the jurisdiction will succeed only if the acts were also actionable according to the *lex fori*: therefore, although actions commenced in our courts *must* be for acts unjustifiable by the *lex loci*, they cannot expect to succeed irrespective of whether they are well founded according to the *lex fori*. In *Kohnke* v. *Karger* [1951] 2 K.B. 670, the plaintiff had been injured in France in a collision between a car, which was driven by her employer, an Englishman, and in which she was a passenger, and a motor lorry. In proceedings in France she was awarded the equivalent of £1,400 damages against the lorry driver; she then brought proceedings in England in respect of the same injuries against the driver of the car. The damages were assessed at £2,200 (according to the principles of English law) and Lynskey, J., held that the plaintiff was entitled to judgment for the balance between the French award and the English assessment. The English court was bound to assess damages in accordance with the *lex fori* and was not bound by the French assessment; there were here two causes of action against separate defendants and the plaintiff could proceed against a defendant in England notwithstanding she had already recovered damages against the other defendant in proceedings abroad in respect of the same *damnum*.

Even though the *lex loci*, therefore, may be claimed to represent the "social environment" of the tort, or to reflect its character, or to express the ideas of the social order of the place where the act took place, a consideration of the *lex loci* by itself will not lead to a decision as the actionability of the alleged tort in England. If an English motorist causes an accident while driving a car in the U.S.A. he is, normally, liable to the consequences as they are laid down by the *lex loci*. Should he be so liable in an English court, whether or not he is *also* liable according to our own domestic law? The English answer to this last question is clearly in the negative; see *Canadian Pacific Railway Co.* v. *Parent* [1917] A.C. 195, per Lord Haldane, at p. 205, and the very recent decision in *Re United Railways of the Havana and Regla*

Warehouses, Ltd. [1959] 1 All E.R. 214, per Jenkins, L.J., at p. 238.

What exactly is meant by the statement that "the act complained of must be an act not *justifiable* according to the law of the foreign country where it was done"? This rule, the second part of the rule in *Phillips* v. *Eyre* (the first part will be considered later in our discussion of the place of the *lex fori*), was examined and "explained" by the Court of Appeal in the leading case of *Machado* v. *Fontes* [1897] 2 Q.B. 231, which concerned an action for damages for alleged libel upon the plaintiff in a pamphlet published in Brazil. The defendant contended that, even if the pamphlet had been so published, by the *lex loci* there would be no action in which damages could be recovered although the matter might be the subject of criminal proceedings. Both Lopes and Rigby, L.JJ., in their judgments, interpreted the word "justifiable" (according to the *lex loci*) as though it meant "innocent" or perhaps "excusable." As a result the court held that the libel was actionable here and that, per Lopes, L.J., at p. 233:—

> ". . . directly the right of action is established in this country, . . . the ordinary incidents of that action and the appropriate remedies ensue. Therefore, in this case, in my opinion, damages would flow from the wrong committed just as they would in any action brought in respect of a libel published in this country."

Machado v. *Fontes* has been very widely criticised, rightly so in the view of the present writer, both by judges and by writers who believe that it is inconsistent with the second rule in *Phillips* v. *Eyre* and that it places a quite unfair emphasis upon the importance of the *lex fori* instead of upon the *actionability* of the alleged wrong under the *lex loci*.

The *lex fori*

It will be apparent, from what has gone before, that the English rules place unusual importance upon the relevance of the *lex fori* to actions brought in this country in respect of foreign torts. The rule that the act complained of must, in addition to its being unjustifiable according to the *lex loci*, be actionable as a tort according to English law is derived from the case of *The Halley*, *supra*, although it is usually styled the "first rule in *Phillips* v. *Eyre*." In *The Halley*, a decision of the Privy Council on appeal from the Court of Admiralty, the defendants' ship had collided, whilst in Belgian territorial waters and under the control of a compulsory pilot, with the plaintiff's vessel. By Belgian law, but *not*, at that time, by English law, the defendants were liable for the negligence of the compulsory pilot which had caused the collision. In holding that the plaintiff's action should be dismissed, Selwyn, L.J., who gave the judgment of their lordships, said (at p. 204):—

> ". . . it is, in their lordships' opinion, alike contrary to principle and to authority to hold that an English court of justice will enforce a foreign municipal law, and will give a remedy in the shape of damages in respect of an act which, according to its own principles, imposes no liability on the person from whom the damages are claimed."

In the subsequent case of *Phillips* v. *Eyre*, *supra*, the facts of which need not concern us here, Willes, L.J., expressed the *ratio decidendi* of *The Halley* in rather different terms, but his words have become accepted as the classic statement of the rule:—

> "As a general rule, in order to found a suit in England for a wrong alleged to have been committed abroad . . . the wrong must be of such a character that it would have been actionable if committed in England. . . ."

The combination of the two rules in *Phillips* v. *Eyre* has been called unjust, inconvenient and illogical. In the next article some of the practical consequences of the rules will be considered, as will the most often advanced suggestions for a clarification of the law which derives from them.

(To be continued) K. R. SIMMONDS.

DESPATCH FROM OTTAWA—I

By a SPECIAL CORRESPONDENT

IT was disappointing to see the President of The Law Society in the middle of the back row at the formal opening of the Second Commonwealth and Empire Law Conference in the building of the Supreme Court of Canada on 14th September, but he is not the first man to lead the pack from the middle of the back row. Unlike Washington, Ottawa evoked a little humour in some of the speeches before his but, as at Washington, he outshone the others like a dollar among a pocketful of cents. The President delighted English members of his audience by his briskness, his light touches and a complete lack of that pomposity which seems to be an occupational disease of speakers at the opening of such conferences.

It was pleasant to wake in Ottawa. The air was like wine instead of being, as at Washington, like hot tea. When the President commented that at Ottawa we would be participants whereas at Washington we were no more than guests, he put his finger upon a very real difference between the two occasions. In six hours I have already been invited by a complete stranger to have dinner with his family and go out to see the football game; while another friendly stranger has asked me to lunch for tomorrow. What is more important is that at the opening general session this afternoon I heard the most sound common sense on the subject of administrative tribunals from the President of the Canadian Bar Association, Mr. Donald McInnes, Q.C., and a very good speech revealing considerable knowledge of the personalities of English judges from Mr. John I. Robinette, Q.C., LL.D., D.C.L., the Treasurer of the Law Society of Upper Canada, to mention only two among an afternoon of speeches that were first rate.

Above all, we are in a city where you can move about. It is a pleasure to walk and not too difficult to cross the street. The impressive government and judicial buildings that make a compact centre to Ottawa are quickly accessible from each other and our hotels are in the middle of them. There is a comfortable feeling that we are all close together, that everyone will meet frequently and that the covering of the various sessions will be a pleasure.

(To be continued)

THE TRAVELLERS RETURN

In my preliminary despatch from Washington two weeks ago (the expression "fortnight" does not seem to be in common use in the United States) I warned those who stayed at home against the anecdotes with which they would be assailed about the perils and adventures attending the journeys across the Atlantic. The danger from these anecdotes (the equivalent of war-time bomb stories) is now somewhat less, but has been replaced by two more dangers, in many ways more ominous. We all went through one of Washington's celebrated heat-waves and most of us encountered Hurricane Donna. The Americans certainly went to great lengths to show us everything, but unhappily we have all come back with either heat-wave stories or hurricane stories, many of us with both. This is intended as a warning.

It would be impertinent to essay any kind of general survey of the visit. We were there for such a short time and covered, comparatively, such a small fraction of the United States, that nearly every general conclusion must inevitably be false. One conclusion, however, we can all draw without any reservation or fear of contradiction; the reputation of the Americans for hospitality has not been exaggerated. I do not presume to speak for every single member of the party but I myself, and everyone to whom I have spoken, had a truly wonderful time and we shall never forget it. There is sometimes a tendency to evaluate hospitality in material terms and Americans are sometimes accused of laying too much stress on material things. Certainly there was nothing we lacked in physical comfort, but I personally was touched much more by the personal warmth of our hosts and the lengths to which they went to make us happy. I arrived at Washington Airport at 2.10 a.m. on 29th August to find a cheerful American lawyer waiting for me. Within a few minutes we were drinking Britain's Most Welcome Export in his apartment and we finally got to bed at 4 a.m. Not a word, not even a look, of reproach.

Sitting on the bench

When some of us visited courts we were invited immediately on to the bench to sit beside the judges, who gave us a commentary on the cases they were hearing. Our hosts threw open their offices and happily told us all about their methods of working and something about that hardy perennial at conferences of The Law Society—costs. When our time came to leave our various ports of call there was no suggestion of a cab calling for us and our leaving with a few perfunctory waves from the front porch. Our hosts, sometimes accompanied in whole or in part by their families, drove us to terminals or even sometimes to our next city and then sent on by air mail the various belongings which we had left behind.

For me it was a constant effort to remember that I was in another country, 3,000 miles and more away from home. Nor was the warmth confined to our hosts and their families and lawyers generally. Bank clerks, people in shops, taxi drivers, clerks at airports and everyone with whom I came casually into contact seemed genuinely pleased that I was there. Shopping was frequently a slow process because so many of the salesmen either had family connections with Britain or had visited us during and since the war.

So vast and varied is even the small corner of the United States which we visited that no one of us can have done more than learn very little about the various legal systems with which we came into superficial contact and which we saw operating at first hand. I am tempted not to try to relate anything of what I saw, on the ground that my observations for so short a period in such a limited number of places must inevitably be misleading. Nevertheless, I propose, abandoning the editorial plural, to try to describe some of the ways in which things are done differently.

Government as umpire, not player

One impression, which I believe to be sound, is that there is a widespread reluctance to allow the government, whether Federal, State or municipal, to engage positively in economic activity. I touched on this when, in my earlier article, I referred to the absence of a legal aid scheme as we know it. The same attitude is manifested in the system of conveyancing which exists in Northern Ohio and in radio and television, to quote only two examples. This attitude, however, does not extend to government regulations, which appeared to me to be more enveloping and cast more widely than in this country. In other words, if I may hazard another generalisation, Americans tolerate and even welcome government in the capacity of an umpire but not in that of a player. In coming weeks I shall do my best to describe in outline the system of conveyancing as I saw it in Cleveland, Ohio, civil procedure in three States, and some aspects of administrative tribunals and of the criminal courts in two States. Others will have seen different things and, reverting to the editorial plural, we shall welcome short articles and descriptions of parts of the legal systems seen during the crowded visit. But please keep them short.

Once again, we thank the American Bar Association and the other Bar Associations for their kindness in inviting us and the individual lawyers and their wives and families, particularly the wives, for their personal hospitality and for the welcome they gave us. We have all returned with the settled intention of re-visiting the United States when we have the chance. We hope we were not too much trouble.

P. Asterley Jones.

LEGAL AID: GUIDE TO MAZE

"Legal Aid Summary," recently published as Oyez Table No. 16 by The Solicitors' Law Stationery Society, Ltd., at 2s. 6d., sets out clearly summaries of the requirements for obtaining legal advice and aid with reference to the regulations and practice as at 22nd August, 1960. Its two principal sections, one on civil aid and the other on criminal cases, tabulate financial eligibility, granting authority, forms of application, costs assessor and payer, and documents required, together with useful notes in respect of the various types of legal aid available. Addresses and telephone numbers of area committees are also given.

LUNCHEON FOR AUSTRIAN JUDGES

A party of Austrian judges led by Dr. Otto Lachmayer and Dr. Franz Berger were welcomed to England on behalf of the Lord Chancellor and the legal profession at a luncheon presided over by Sir Sydney Littlewood at The Law Society's Hall on 9th September. Also present were: Mr. W. T. C. Skyrme (Lord Chancellor's Department), Sir Dingwall Bateson (senior past president of The Law Society), Mr. H. Wentworth Pritchard, Mr. B. C. Ogle and Mr. W. H. Bentley (members of the Council) and Mr. Edwin J. T. Matthews (Under-Secretary, The Law Society).

County Court Letter

POTS, KETTLES AND THINGS

It is sometimes suggested that the modern dramatic scene is dominated by young men who are angry if nothing worse and not so young women whose vitality is statistical if nothing better. It is therefore not altogether surprising that in many dramas of to-day it is not so much a conflict between good and bad as between horrible and even worse. None of the characters are admirable; it is merely a question of which one is the least unsympathetic.

One has something of the same feeling about the recent Press controversy on the matter of judgment summonses and hire-purchase debtors. There appear to be two main schools of thought on the subject; the first, while holding no brief for the finance companies, cannot see why they should be deprived of the normal rights of enforcing a judgment; the other, while holding no brief for the improvident hirer, feels that if finance companies give financial support to persons unworthy of it they have only themselves to blame. (Observe how adroitly we avoided referring to "lending money.") No doubt there are also extremists on both sides—finance companies who insist on the right to recover the last gramme of their pound of flesh, and trade unionists who regard weekly H.P. payments of a few pounds as part of the normal cost of living, but on the whole their voice has not been heard in the controversy.

The whole thing started when the Home Office figures in connection with prisons disclosed that there were some 5,000 persons in prison under judgment summons committal orders, in many cases in connection with hire-purchase debts. When one considers that possibly something of the order of 200,000 judgment summonses were heard last year in the county courts alone, this figure does not seem remarkably high, but no doubt the reference to hire purchase was enough to trigger off a spate of letters to editors and consequential editorials expressing the views of the two opposing schools of thought. They mostly had one thing in common, however. This was a fundamental misconception of the nature of imprisonment for debt at the present time.

The wrong idea

Almost inevitably one leading newspaper editorial referred to imprisonment under s. 5 of the Debtors Act, 1869, as being "Dickensian," a cliché no doubt as irresistible as it is inappropriate. Even one solicitor made it quite obvious in his letter that he had completely failed to appreciate that there was no such thing nowadays as imprisonment for being unable to pay one's debts. (Let us hope that he was not a reader of the Solicitors' Journal and had therefore not seen such articles as "The Road to Brixton" and "The One that Got Away," at 103 Sol. J. 685 and p. 362, *ante*, respectively.) The plain fact, expressed in the plainest possible terms, is that under s. 5 (2) of the Debtors Act, 1869, a committal order can only be made when it is proved to the satisfaction of the court that the person making default either has or has had since the date of the judgment the means to pay and refuses or neglects or has refused or neglected to do so. In other words, it is either a sanction to make him pay when he is able to do so and will not, or a punishment for not having done so when he could. It is therefore very similar to committal for contempt for disobeying an order of the court, the main difference being that it is for a maximum period of six weeks instead of for an undetermined one. In no circumstances whatever can anyone be imprisoned in respect of a debt that he cannot pay.

It follows, therefore, that the favourite argument that hire-purchase companies should be deprived of the right to use judgment summons procedure against defaulting hirers is actually a non-starter. The man, or more probably woman, who is persuaded to take on more hire-purchase commitments than he or she can afford is the one who cannot, rather than will not, pay, and who therefore is in no real danger of imprisonment under s. 5. Assuming that judges do their job properly, and there is no suggestion that they do not, he or she is safe.

The turn of the screw

One correspondent, taking the opposite view, pointed out that a certain proportion of debtors pay at each stage of a county court action. Service of the summons, hearing, service of the judgment summons, hearing of that, and arrival of the bailiff with one single and one return ticket to Brixton; each stage produces its quota of payments. To deprive a hire-purchase company of judgment summons procedure would be to deprive it of three of the most compelling means of levering cash out of the reluctant payer. As has been pointed out on a number of previous occasions, the last thing that anyone wants to do is to send the debtor to prison where he cannot earn anything to help him pay his debts. But the threat of it is sometimes the only thing that will make him pay.

Though one cannot be sent to prison twice in respect of the same debt or part of it, imprisonment does not extinguish the debt. This is expressly laid down in s. 5 of the 1869 Act. In order to clear up any misunderstanding that may have arisen as a result of a remark by one correspondent to *The Times*, though the same thing applies to a maintenance order made in the High Court, which is recoverable as a debt, it does not apply to an order made under the Summary Jurisdiction (Married Women) Acts, 1895 to 1949,* which is enforceable as an affiliation order. Imprisonment, therefore, extinguishes it (*R.* v. *Miskin Lower, Glamorganshire, Justices; ex parte Young* [1953] 1 Q.B. 533).

But we digress disgracefully—back to our muttons. Why should an unspecified proportion of 5,000 people be languishing in gaol for refusing to pay their hire-purchase debts? Are they muddle-headedly trying to revenge themselves on dealers who have sold them pups or finance companies who have repossessed goods hired to them? Do they fancy themselves as 1960 Tolpuddle Martyrs or Village Hampdens or something at least T.V.-genic if not genuine? We can ask the questions but we can only guess the answers. One thing that is obvious, however, is that unless something has gone very wrong, they have only themselves to blame for being there. One may perhaps consider that as characters in the great drama of the Hire-Purchase Age, they excite little pity, and even less admiration.

J. K. H.

* These Acts will be replaced by the Matrimonial Proceedings (Magistrates' Courts) Act, 1960, as soon as the latter Act is brought into force by statutory instrument under s. 19 (3) of that Act.

PRACTICAL COURSE FOR BARRISTERS

In view of the recently announced proposals of The Law Society to revise the educational requirements for solicitors, we invited Mr. Thomas Harvatt, C.M.G., the Secretary to the Council of Legal Education and Deputy Director, to give a description of the very successful Post-Final Practical Course which that Council provides for barristers.—EDITOR.

EVERYONE has heard the phrase "reading for the Bar." For a student who intends to practise this involves reading for a stiff examination in English law and its application in the courts followed by reading as a pupil in the chambers of a practising member of the Bar to learn there under the eye of a master those professional skills which every young barrister strives to attain.

Before the last war there was no serious difficulty in finding a place as a pupil in chambers. After the war the situation was very different. Visiting airmen had left destruction behind them and the few rooms then available in the Inns of Court in usable condition were wholly inadequate for the needs of those days.

At that time more students than ever before came to the Inns of Court from the Commonwealth for legal education. This was expected after the frustration of four years of war and natural with so much more wealth in the hands of the Oversea Commonwealth countries. But they, like our own young men, wanted instruction in chambers and there was not room for everyone.

The Bar Council quickly saw the problem and encouraged the Council of Legal Education to try to provide a solution—intended primarily for those who will practise overseas—using the experience and facilities it had as a result of organising the Inns of Court School of Law for over a century and of holding the Bar examinations for nearly sixty years.

Group teaching

The Council of Legal Education decided to devise a course of instruction using group teaching which would be quite different from the courses of lectures and tutorials leading to the Bar examination.

There were two main reasons for making what came to be known as the Post-Final Practical Course different from the others. We wanted to give the students the confident feeling that they were crossing the threshhold of their career and we wanted to make the course practical by requiring them to undertake certain duties of a barrister so that their efforts could be improved through individual guidance.

Some time was spent at first in selecting the topics to be included in the course and in putting them into an arrangement which "flowed."

It was decided to run the course for three months and to divide it roughly into two. The first part is used to build up the students' information and the second part is filled with court exercises.

The syllabus

The syllabus includes chamber work (the drafting of documents and the preparation of material) and court work (for example, the examination and cross-examination of witnesses, pleas in mitigation).

The first course (which we now refer to in familiar terms as the "Pilot Course") was held in 1951. There were thirteen pupils and they were so enthusiastic and appreciative that we were encouraged to persevere. The first group told their friends that they must not go away without taking this instruction and so six months later there were enough eager volunteers to justify a repetition.

The mixture was not quite as before, for we had some improvements up our sleeves. For example we knew then that greater emphasis had to be put on the teaching of elocution in advocacy. We knew, too, that although the main work had to be by group teaching, each pupil had to be put through many of the exercises individually.

No student who wanted this instruction had been turned away and as the numbers have grown steadily sub-division of the classes has had to be undertaken. We are now halfway through the forty-sixth and forty-seventh courses and more than a thousand pupils have taken this instruction.

The tutors

The master-tutor is a very experienced Recorder and well-known leader of the Bar and he is ably assisted by another barrister almost equally eminent. Specialists come in to help with selected aspects of this work and in all about sixteen practising members of the Bar lend their aid. We think it is important to bring as large a number of teachers into the scheme as possible so that the pupils will get accustomed to a changing pattern of judicial and magisterial approach. It is important also because each has something very personal to contribute and we find that pupils, being anxious not to miss anything, maintain excellent attendance.

Many of these oversea students go back to countries where there is a fused legal profession; so a course which replaced reading in chambers and did nothing more would give them a one-sided preparation for the sort of practice they will develop at home. We therefore introduce them to some of the duties performed here by solicitors and a member of that branch provides (towards the end of the course) what has turned out to be a highly popular chapter of the instruction.

Court exercises

The brightest parts of the course have always been the court exercises. These begin in small class rooms. They are based on prepared briefs and two pupils act as counsel and two or more as witnesses. The tutor sits as judge and in the early exercises he has quite a lot to say about the conduct of the proceedings and the presentation of the case. As the pupils get more practised the hearings move to a larger room and the tutor says less. The final court exercises now always take place in a real court where, through the courtesy of the authorities, we go after court hours when public business is over. In place of the tutor someone who has held judicial office sits as judge and the pupils have full responsibility and carry out their duties with amazing confidence in view of their inexperience.

In building up this unique vocational course the Inns of Court through their Council of Legal Education have performed a pioneer service. There is nothing similar to it in this country in the field of legal education.

The most rewarding feature of the course is that pupils from all over the Commonwealth (it is not unusual for them to represent eighteen different countries) work together in complete harmony and understanding. The impressions which they get during these final three months are the most vivid ones they take back with them, and are intended to remind them that they are part of a legal community which is as well worth preserving and developing as is the English common law.

THOMAS HARVATT.

THE CHARITIES ACT, 1960, AND THE CONVEYANCER—I

THE Charities Bill received the Royal Assent on 29th July, and some of its provisions came into force on that day. Mostly, these deal with purely administrative matters, such as the new constitution for the Charity Commissioners; but they also include, as was noted at p. 629, *ante*, the repeal of the Mortmain and Charitable Uses Acts together with a vast mass of related legislation, starting with part of the statute *Quia Emptores* and ending with a few words in the New Towns Act, 1959. Apart from that, the Act will not come into force until the beginning of next year. In the form in which it has reached the statute book this measure does not differ greatly from the Bill as it emerged from the House of Lords last spring. Two articles which appeared in this journal at that time (at pp. 337 and 359, *ante*) explained the general scope of what is now the Charities Act, 1960, in considerable detail, and all that it is necessary to say generally about the Act now is that the new section which was forecast by the writer of these articles was added to the Bill during its passage through the Commons. This section (s. 14) is designed to make it possible to order the application cy-près for useful and living charitable purposes of funds collected for a charitable purpose which has failed (in the technical sense of that expression), and so to avoid the recurrence of the situations which have arisen in more than one recent case where the court has felt itself obliged to order (with no illusions about the practical difficulties involved) the return to individual contributors of contributions made to a fund through such media as whist drives or collection boxes. (An example of such a case is to be found in the reports of *Re Gillingham Bus Disaster Fund* [1958] Ch. 300; [1959] Ch. 62 (C.A.).) Apart from this eminently desirable addition to the Bill, the Commons' amendments were drafting amendments.

Operation of the Act

The operation of the Act may be described under three heads. First, it has cleared away an enormous amount of lumber. The mortmain legislation has already been mentioned. That legislation did at any rate enjoy some kind of life up to the end, as *A.-G.* v. *Parsons* [1956] A.C. 421, showed; much else which the Act has repealed (e.g., the Charitable Donations Registration Act, 1812), although remaining on the statute book, was simply ignored. Secondly, it has repealed and replaced in a much more convenient form, with the amendments necessary to adapt it to the requirements of the present day, the charitable trusts legislation which started with the Charitable Trusts Act, 1853, and consisted principally of that Act and the amending Acts of 1855 and 1860. The blessings of the practitioner will attend the authors of this reform. To take the three statutes just mentioned above (there are nine others to add to make up the fasciculus of the Acts which used to be referred to as the Charitable Trusts Acts, 1853 to 1939), the contents of their 143 sections, some of them very indigestible, together with much else, are now in the forty-nine sections and seven Schedules (three of them containing merely details of repeals, etc.) of the new Act. Lastly, there is the totally new matter, of which the provisions for the compilation of a register of charities are the most important. We shall have to wait for this register, but when it comes it will be of the greatest use to many persons concerned with charities, and not least to the conveyancer instructed in transactions concerning charity property.

Act's effect on transfer of property to charities

That is for the future, but there is much of immediate concern to the conveyancer in the parts of the Act which will effectively come into force on 1st January, 1961. The first matters to consider are, how does the Act affect transfers of property, and particularly of land, to charities and by charities respectively? As to transfers of property to charities, the repeal of the mortmain legislation includes subs. (4) of s. 29 of the Settled Land Act, 1925, which required that every assurance of land should be sent to the Charity Commissioners for registration within six months of its execution. The similar provision in the Education Act, 1944, affecting educational charities has also been repealed. There were never any special requirements of this kind affecting property other than land. Devises of land have up till now been regulated at the receiving end, so to speak, by the Mortmain etc., Act, 1891, but did not require any special treatment so far as the form of the devise was concerned. The position now is that transfers to charities of any kind of property, whether *inter vivos* or by will, and whether for valuable consideration or voluntary, stand on the same footing as similar transfers of property to an individual, with the single difference that in the case of transfers for the benefit of charities it is possible to make use of the official custodian for charities as a convenient transferee and repositary of the legal estate.

Charity Commissioners' control

Transfers of property by charities were always more complicated than transfers of property to charities, by reason of the control exercised by the Charity Commissioners over some charities under s. 29 of the Charitable Trusts Act, 1855. That section made the approval of the Commissioners necessary to the validity of any sale or mortgage of the charity estate, and also of any lease thereof for a term exceeding twenty-one years, by or on behalf of any charity to which the Charitable Trusts Acts applied. The Acts did not apply to a number of specified institutions, e.g., the Universities of Oxford, Cambridge, London and Durham, nor to any charity wholly maintained by voluntary contributions. Put negatively, a charity wholly maintained by voluntary contributions was one which had no permanent endowments. Such a charity could sell, charge and lease its land freely, and under the old system the conveyancer became well acquainted with inquiries into the financial structure of all kinds of charitable institutions. He also had to have a working knowledge of the extremely technical rules which governed mixed charities, i.e., those charities which were supported partly by voluntary contributions and partly by endowments, and which were subject to the control of the Commissioners in regard to the disposition of land forming part of their endowments, but free of it in regard to dispositions of land representing voluntary contributions.

Substantially, this control is preserved by s. 29 of the new Act, which provides (by subs. (1)) that, with certain exceptions, no property forming part of the permanent endowment of a charity shall, without an order of the court or of the Commissioners, be mortgaged or charged by way of security for the repayment of money borrowed, nor, in the case of land in England or Wales, be sold, leased, or otherwise disposed of. The expression "permanent endowment" is defined, in effect, to mean property held for the purposes of

the charity which may be expended for those purposes without distinction between capital and income. Property representing contributions which can be so expended (the "voluntary contributions" of the old legislation) is outside the control of s. 29 and the charity may validly sell or charge or lease such property without an order of the Commissioners. Inquiries as to the source from which the property being dealt with was provided will thus continue on the old lines, although a new phraseology will have to be adopted. The old concept of a "mixed charity" also appears to linger on. Under s. 45 (3) a charity is deemed to have a permanent endowment unless all property held for its purposes may be expended for those purposes without distinction between capital and income. But there appears to be nothing in the Act to prevent a charity having a permanent endowment from also holding other property, i.e., property which may be expended without distinction between capital and income, which property, not being property forming part of the charity's permanent endowment, is not within s. 29. But this is subject to s. 29 (2), which equates, for the purposes of this section, land which has been occupied for the purposes of a charity with land forming part of a permanent endowment. If, therefore, it can be shown that land has been in the occupation of a charity, an order of the Commissioners is necessary for its valid disposition by the charity; but, despite the absence of an order, such a disposition is nevertheless valid in favour of a person who in good faith acquires an interest in or charge on the land for money or money's worth.

When Commissioners' order in respect of a lease not required

The necessity of obtaining an order of the Commissioners consenting to a lease of land under s. 29 does not apply to a lease for a term ending not more than twenty-two years after it is granted, if it is not granted wholly or partly in consideration of a fine. The section as a whole does not apply either to certain charities which are described in the Acts as exempt charities, or to any charity which may be excepted from the Act by order of the Commissioners or which is of a description excepted by regulations to be made under the Act (s. 45 (6)). There is a list of "exempt" charities in Sched. II. They include certain universities and colleges, the British Museum and the Church Commissioners—i.e., institutions which are adequately regulated in their dealings with their property by other legislation.

The effect of s. 29 may be summarised as follows. If the charity concerned comes within the section, i.e., is not an exempted charity, or if the property which is the subject of the transaction forms or at the relevant time formed part of the permanent endowment of the charity (including land which has been occupied by a charity), an order of the Commissioners is necessary for the validity of certain dispositions of the property. These dispositions are, in the case of any kind of property, a mortgage or charge to secure the repayment of money borrowed, and in the case of land in England or Wales, any sale, any lease for a term exceeding twenty-two years granted in consideration of a fine, or any other disposition.

(To be concluded) "A B C"

LAW IN A COOL CLIMATE—IV

WHEN Sir London Thomas sat down to breakfast on the fourth day of his visit to Refrigia, the ice-bound country in Antarctica, he found that his host, Sir Ambrose Leeward, had thoughtfully provided two practising solicitors to join the breakfast party. As both were concerned in the divorce case which was due for hearing at 9.30 sharp, this gave an opportunity for Sir London, together with Mr. Bull and Mr. Bear, to learn a little about divorce in Refrigia from their two companions, Mr. Ice and Mr. Snow.

Divorce law in Refrigia is based on a novel conception of marriage. "We believe in marriage," said Mr. Ice, a hearty paterfamilias type of about fifty. "Not much fun for the couple involved, of course, but absolutely essential for the children. What puzzles us here is your curious view of the marriage ceremony."

"Suppose I got married in a cathedral in England," said Mr. Snow, a younger, more eager type, "married by a bishop with a choir of fifty singing 'The Voice that Breathed o'er Eden' with all my relations and all the girl's relations watching and the bishop pronounced us man and wife, would I be actually married or not when I left the church?" Mr. Bull opened his mouth to emit a roar but Mr. Bear intercepted him. "Officially, yes," he said smoothly. "But it would of course be possible for a decree of nullity to be pronounced at a later date if the marriage was not subsequently consummated."

"That is just the point," said Mr. Snow. "I read all about these things in English novels and the shiny papers. The clergyman says, 'I now pronounce you man and wife' and makes a pretty solemn declaration about the permanence of it all, but if in fact that couple does not copulate and copulate properly some time afterwards, the same clergyman is perfectly willing to say that you were never married. Is that true or not?"

"I am afraid it is true," said Mr. Bear. "We regard marriage in church as effecting a spiritual union but, unless this is followed by physical union, the marriage does not really exist. It can subsequently be pronounced a nullity and it can be said quite truthfully of both parties to the ceremony that they have never been married and so there is no objection to their getting married again, if you can call it 'again.' The clergy are perfectly willing to receive people who have gone through this experience into church a second time and go through the marriage ceremony with them a second time but with different partners."

"So," said Mr. Ice heavily, "you say that a marriage is not a marriage until first of all a sort of licence to join in physical union has been provided by the church and secondly the actual physical union has taken place?"

"Equally," said Mr. Bear, "a ceremony in a registry office acts as a sufficient licence to permit the attempting of physical union. The first ceremony does not necessarily have to be a spiritual one."

Children essential for marriage

"That means you do not even recognise the spiritual ceremony unless the physical act follows?" said Mr. Ice. "Now you will see that what we have done is really not so very different from your theory. All we have said is that a marriage is not a marriage until there are children. After

all, we do think that some of your nullity cases have sunk pretty low in the kind of detail they inquire into in deciding whether or not physical union has actually been accomplished. We are not afraid of things that are unpleasant because we reckon we are as broadminded as you, perhaps more so. But we do insist that the art of law consists in dealing in what is capable of proof. We disapprove of all this appalling nonsense that you get mixed up with in your nullity cases and, after all, we thought it was more practical to say that the real proof of the union was the production of children."

"What about *fecundatio ab extra*?" interposed Mr. Bull.

Sir Ambrose passed rapidly on as if he had not heard. "We just cannot follow the thinking in your country where a lot of people in the very highest places say without contradiction that marriage is indissoluble and yet about 30,000 marriages are dissolved every year. We reckon that the union until there are children can be terminated by a declaration by either party coupled with a rectification of the population register."

"Incidentally," broke in Mr. Snow, "our population register is an idea you might copy. A sort of land registry only applied to people. Everything goes down there, your birth, your marriage, the birth of your children. You have to produce your bachelor certificate before you can get married. We never have any bigamy here because it cannot happen. Even if you forged a bachelor certificate, the registrar or clergyman who marries you has got to search in the central registry before he performs the ceremony."

"On the other hand," said Mr. Ice, "if you are married and you do not get on, then provided there are no children, why on earth should it be considered as a mortal consequence to break the partnership off? We do, of course, inquire whether the wife gave up a good job to get married, in fact we look carefully into the financial consequences of the marriage to both parties, and if we think either has been acting unfairly to the other, we make them pay up. Wives as well as husbands. Apart from possibly having given up a job, what harm does a year or two's marriage do to a woman if she has not had children?"

Children preclude parental divorce

"But the really big point in Refrigia is that, once you have had children, you cannot have a divorce at all. That is an absolutely firm rule, at least until the children are all over sixteen. After that we relax the rule again. The whole basis of our view of marriage is that once you start to have a child you have committed yourself. By the way, that is why we have a nine months' delay between the decree nisi and the decree absolute. If you do not feel sure you could live with a woman, do not have children. Once you have got children, you must remember that the continuance of the marriage is not for your sake or for her sake but for the sake of the children. That is basic. We never talk about a marriage making the husband and wife happy. The thing we stress in the speeches at the party is that it has given them an opportunity to bring children into the world and make them happy.

The funny thing of course is the way it has worked out. You would have thought that newly married couples, knowing that they could get a divorce so long as they did not have children, would have delayed having them. Not a bit of it. It is considered the most tremendous compliment a man can pay his wife to put her in the family way at the earliest possible moment. It is a sort of declaration of trust and means that he is so absolutely certain he has chosen the right partner and so ready to bind himself to her, that he has voluntarily burnt his boats as quick as he can."

"That is why we make such a big thing of our pregnancy parties," said Mr. Snow.

"Your what?" said three English voices.

"Our pregnancy parties," said Mr. Snow. "They are the most tremendous fun, very happy and, what is more, very solemn, too. You see, with us, a wedding is a very quiet affair. Rather like an engagement party in your country. Of course, it is all done officially and is practically always done in church, as we are a very religious people, but everybody looks upon it as a sort of preliminary. The clergyman prays that God will bless the union. He does not claim that God has already done so. We regard the conception of children as the proof of God's blessing. Then the husband and wife give what we call a pregnancy party. All their friends come and, of course, the clergyman who married them, too, and there are speeches and everybody congratulates them like anything. After all, they have got something to be congratulated about. They have proved their fruitfulness. They have proved that the marriage has received a spiritual blessing, and they are virtually announcing to the world that the marriage is now for keeps and neither of them can ever think again about divorce."

Mr. Bear was raising his eyebrows rather a long way (not half as far as Mr. Bull was raising his). Sir London was looking quizzical, noting it all down in his memory as usual. Mr. Bear broke in: "What if the husband turns into an absolute outsider when the children are, say, seven years old and starts committing adultery all over the place or knocking his wife about? Do you mean to say that she cannot divorce him even then, not until the children are all over sixteen?"

Family courts

"That is dealt with by the family courts," said Mr. Snow. "On the whole, we do not hear a lot about adultery. I am inclined to think you would not have so much of it if it was not the approved road to divorce. Of course it does happen. A sensible wife deals with it her own way. She can always report him to the family court if she likes; husbands the same, though we very rarely find husbands reporting their wives for adultery. If a case is reported, we do what we can to sort the case out without punishment (I serve on one of the courts) and very often we can put things straight that way, but sometimes we fine a husband. He has to pay the money to his wife, of course, not to us. Women are punished by making them scrub out school buildings at night, not allowing them to buy new dresses, and so forth. Most of the punishment is pretty domestic and humdrum in character, the kind of thing that husbands and wives did to each other for centuries before you northern people started this divorce racket."

"I think," said Sir London tactfully, "that my two friends are feeling rather faint. Do you think that we might spend the morning in the zoological gardens for a change?"

(To be continued) E. A. W.

GENERAL, LONDON AND URBAN PROPERTIES, LTD.

The report of the Inspector appointed by the Board of Trade in February, 1958, pursuant to s. 164 of the Companies Act, 1948, to investigate the affairs of General, London and Urban Properties, Ltd., has been published and copies may be obtained from Her Majesty's Stationery Office, price 5s. 6d. (by post 5s. 11d.).

"The Solicitors' Journal"
Friday, September 23, 1960

Landlord and Tenant Notebook

FARMERS AND FORFEITURE

THOUGH relief is likely to be granted—on terms—in most cases, it is a little surprising that landlords of agricultural holdings so seldom seek to exercise their rights under provisoes for re-entry. It must often be the case that pressure could more effectively be brought to bear on unsatisfactory tenants by forfeiture proceedings than by serving "reasoned" notices to quit.

One possible explanation is the doubt which has been expressed as to whether such provisoes are valid. It has been suggested that, by depriving the tenant of his ability to give the required one month's notice of intention to claim more than a year's rent as compensation for disturbance or for "high farming," a forfeiture clause would offend against the prohibition of contracting out.

Before dealing with such authorities as may be said to contribute towards the proposition, I will briefly refer to the provisions in point.

Contracting out

The Agricultural Holdings Act, 1948, s. 65 (1), enacts that (save as expressly provided, and the exceptions are not relevant to this discussion) a landlord or a tenant shall be entitled to compensation in accordance with the provisions of the Act and not otherwise, "and shall be so entitled notwithstanding any agreement to the contrary."

Section 34 (1) says: "Where the tenancy of an agricultural holding terminates by reason either (*a*) of a notice to quit the holding given by the landlord; or (*b*) of a counter-notice given by the tenant under s. 32 of this Act after the giving to him of a notice to quit part of the holding . . . and in consequence of the notice or counter-notice . . . the tenant quits the holding, then . . . compensation for disturbance shall be payable to the tenant . . ."; and subs. (2), after making consequential loss or expense the measure, enacts by proviso (*a*) that it is to be one year's rent without proof of any loss or expense and by proviso (*c*) that: "the tenant shall not be entitled to claim any greater amount than aforesaid unless not less than one month before the termination of the tenancy he has given the landlord notice of his intention to make such a claim."

Compensation for high farming is dealt with by s. 56. Its first subsection creates the right, on the tenant quitting on the termination of the tenancy, to compensation for increased value due to the adoption of a more beneficial system of farming, etc., and a proviso says that such compensation shall not be recoverable unless: "(i) the tenant has, not later than one month before the termination of the tenancy, given to the landlord notice in writing of his intention to claim compensation under this subsection."

Mention should also be made of the definition of "termination," in relation to a tenancy, in s. 94 (1): it means "the cesser of the contract of tenancy by reason of effluxion of time or from any other cause."

The authorities

The tenancy agreement before the court in *Re Disraeli Agreement and Re the Agricultural Holdings Act*, 1923; *Cleasby* v. *Park Estate (Hughenden), Ltd.* [1939] Ch. 382, contained a proviso that the landlord should be entitled to resume possession in case required for building or otherwise of any portion of the demised premises without payment of compensation to the tenant. The lease before the court in *Coates and Others* v. *Diment* [1951] 1 All E.R. 890, reserved unto the landlord the right to enter at any time without notice upon such land as he might require for building sites or planting or other purposes. In each case the landlord had in fact given notice; in *Re Disraeli Agreement* it was a "forthwith resumes possession" one, in *Coates* v. *Diment* a month's notice.

The tenant in *Re Disraeli Agreement* took out an originating summons. The position was governed, at the time, by the Agricultural Holdings Act, 1923, which by s. 12 (7) insisted on a month's notice in writing, before the termination of the tenancy, of intention to claim for disturbance, and by s. 50 provided that a contract by virtue of which a tenant's right to compensation under the Act was taken away or limited should to that extent be void. A contention by the landlords that there was no "termination of the tenancy" because only part of the land was being taken was rejected, and Crossman, J., held as follows: "In my judgment, as cl. 4, sub-cl. 4, of the tenancy agreement, if valid, would enable the landlord to determine the tenancy as to part of the premises by re-entering without any previous notice . . . the tenant would be deprived of his right to compensation . . . and the clause is, so far as it purports to enable the landlord to determine the tenancy as to part without any previous notice, rendered invalid by s. 50."

The tenant in *Coates* v. *Diment* took the point within a month of receiving the landlords' above-mentioned notice, and they sued for possession of the part claimed. Streatfeild, J., held that Crossman, J.'s reasoning in *Re Disraeli Agreement* applied, adding that the reservation would also deprive the tenant of his right to claim compensation for high farming.

Nature of forfeiture

A provision is thus invalid if its effect is to disentitle a tenant to compensation in accordance with the statutory provisions, and the statutory provisions mentioned operate on the termination of his tenancy. Section 34 (disturbance) begins: "(1) Where the tenancy of an agricultural holding terminates . . ." and s. 56 (high farming) gives him his right "on quitting the holding on the termination of the tenancy."

The first question to be considered, then, is whether re-entry for breach of condition terminates the tenancy, regard being had to the "cesser of the contract of tenancy by reason of effluxion of time *or from any other cause*" of s. 94 (1). Support for the view that forfeiture falls within the definition can be found in *Re Morrish; ex parte Hart-Dyke* (1882), 22 Ch. D. 410 (C.A.): the case concerned the effect of a disclaimer in bankruptcy, and Jessel, M.R., agreed that it deprived the parties of all future benefits (the tenant of a right to payment for tillages, the landlord of a right to take hay and straw at feed prices) provided for by the lease. That decision related to a farm, but decisions showing that the common-law right to remove fixtures is destroyed by forfeiture (the most recent of many is *British Economical Lamp Co., Ltd.* v. *Empire, Mile End, Ltd.* (1913), 29 T.L.R. 386) provide further support for the view that forfeiture must be a cause effecting cesser of the contract of tenancy.

Next, as the giving of a notice to quit is a condition precedent to a claim for compensation for disturbance, a forfeiture clause cannot be said to deprive a tenant of his right to such. There remains, however, the objection that it expresses an agreement contrary to a right to compensation in accordance with the provisions of the Act, the right to compensation for high farming conferred by s. 56, and is thus made void by s. 65 (1).

The objection can hardly be met by referring to ancient authorities describing a proviso for re-entry as a qualification of the estate granted (e.g., Co. Litt. 201*a*), for it is a condition to be construed according to the intention of the parties to an agreement. It is, however, difficult to reconcile the validity of the objection with the direction to arbitrators concerned with the provisions of written tenancy agreements under s. 5 to make provision for: "A power for the landlord to re-enter on the holding in the event of the tenant not performing his obligations under the agreement": Sched. I, para. 9.

R. B.

HERE AND THERE

CITIZENS AND ALIENS

EVEN the most casual visitor to this island must be well aware that the dog has long ago acquired almost all the rights of British citizenship, while being spared most of its duties. That he cannot yet vote or sit in Parliament or be married in the parish church is little to the point. Only a tiny percentage of us aspire (if that is the right word) to sit in Parliament. A surprising number of adult citizens do not ever bother to vote and even more somehow manage to dispense with matrimonial formalities. Cats, on the other hand, have never quite acquired British citizenship; one can scarcely imagine a cat applying for it. They are at best privileged and respected aliens. Occasionally they vouchsafe us a little polite conversation, but they never enter into the family circle with the boisterous familiarity of dogs. They are most themselves when singing sad little duets together at night, full of an unearthly melancholy. They have neither the heartiness nor the sentimentality by which the dog has convinced the British that he is one of themselves.

CAT AND DOG LIFE

ANYONE who is not a dog lover is regarded by the English as something of an abnormality. So much are dogs in step with current behaviour patterns that they even have their own psychiatrists and there are approved schools for delinquent dogs. Cat lovers, on the other hand, while not regarded with the contempt and suspicion reserved for dog haters, tend to be regarded as eccentrics. The classic example of a somewhat unbalanced testatrix is always the old lady who leaves all her money to a Cats' Home. If it were a Dogs' Home, not even her boldest relations would dare to contest the will on the ground of mental incapacity. The dog lover tends to treat his dog as a human being, but more innocently virtuous. The cat lover, at his or her most extreme, tends to merge and become incorporated with the feline nation or clan. Thus the dedicated cat lover's house is filled with cats and made over to them until at last it is theirs and their original host becomes their servant.

EVICTION AT LEWES

SOMETHING like that seems to have happened in the case of the lady who was recently ordered by the magistrates at Lewes to reduce her entourage of thirty-seven cats and fourteen kittens to ten. She knows them all by name and taste; some like steak, some liver, some kidney; all love tinned rice pudding. She is a Bachelor of Music and, to help to support them, plays in a local public house and a Brighton restaurant. When the neighbours complained of caterwauling and cat smells which, they said, drove them from their gardens and forced them either to keep their windows shut or their rooms heavily perfumed, she invited the magistrates to send someone to live in her house for a month, so as to establish that there was no nuisance. Nevertheless, after a seven hours' hearing, the court made the order. Now, an English court would have hesitated far longer than that before it ordered a dog lover to dispose of forty-one dogs. The first instinct of an English court would have been to send the complainants to a psychiatrist to be cured of what could only be construed as a phobia. By patient care and a subtle approach, he would have made them happy to live and let live in peaceful co-existence with their doggie neighbours, who, as we all know, are good extroverts (that current term of psychiatric approval), while cats are brooding introverts. So the lady's madrigal choir of cats must be cut down to ten voices. At the end of the case she is reported to have said: "I cannot do it. I cannot kill any of them." I have not heard whether she has discovered some way not fatal of obeying the court's order, but I venture a suggestion for her consideration. Last year the following story from Madrid was reported in a London newspaper. A noble but somewhat dilapidated mansion in the heart of the city was up for sale, but there were delays and over a period of nine months 400 stray cats walked in and took possession. The Spanish Society for the Protection of Animals became interested and when the sale fell through obtained protection for the sitting tenants. Officials of the society adapted it to their requirements, and so, amid the relics of past splendour, cats of every colour and breed (but not, I suppose, in Spain, of every creed) live in endowed security. If the lady of the cats finds the Lewes neighbourhood too hard for her, she and her family can perhaps settle in Madrid.

RICHARD ROE.

Law Lectures

The following programme for the Michaelmas Term, 1960, has been arranged by the Mansfield Law Club, City of London College, Moorgate, E.C.2: 13th October—"The Future of the Common Law," by the Rt. Hon. Lord Denning of Whitchurch; 3rd November—"International Commercial Law," by Clive M. Schmitthoff, LL.D., Barrister-at-Law; 17th November—"European Trade Groups," by Mr. D. A. V. Boyle, B.A., Barrister-at-Law; 1st December—"The Foundations of English Law," by Mr. C. Locke White, LL.B., Barrister-at-Law. The meetings are held at 6 p.m. at the College. Visitors are welcomed.

REVIEWS

Ranking, Spicer & Pegler's Mercantile Law, incorporating Partnership Law and the Law of Arbitration and Awards. Eleventh Edition. By W. W. BIGG, F.C.A., and R. D. PENFOLD, LL.B., of Lincoln's Inn, Barrister-at-Law. pp. lv and (with Index) 426. 1960. London: H. F. L. (Publishers), Ltd. £1 5s. net.

This student's textbook, though little known to the legal profession, is familiar to most accountants since it is primarily intended as an essential part of their examination reading. Covering a really vast commercial field in some 400 pages, the book is of necessity both dogmatic and selective, avoiding possible confusion by over-much detail. As a result the book is adequate neither as a reference for practitioners nor as an introduction for law students, but for the purposes of the professional accountancy examinations this conciseness is a virtue and not a fault. Basically the book is admirable and a comprehensive statement of those rules of mercantile law which should be known by prospective accountants, containing in addition a helpful glossary. As an aid to learning the content is throughout sub-divided and sub-headed, and it is thought that this process might with advantage be taken to its logical conclusion and an even more tabloid form adopted. Two points of criticism may be made. First, an irritant in the presentation is the consistent use of the symbol "§" as an abbreviation of "section" instead of the usual "s." Second, the book relies insufficiently on modern decisions as illustrations; at least a dozen important cases, decided since the tenth edition was published in 1957 and within the scope of the book, to which no reference is made readily came to mind. On this latter point, the omission of any mention of the British Transport Commission (Passenger) Charges Scheme of 1959 renders the consideration of passengers' luggage in the chapter on carriage positively misleading. Where a book purports to cover a wide field in a small space, as this does, then the difficulties of dogmatism, selection and revision are inherent. Any criticism, therefore, may be not so much of the book but of the examination syllabus which produced it.

The English Prisons. By D. L. HOWARD. pp. xv and (with Index) 174. 1960. London: Methuen & Co., Ltd. £1 1s. net.

If it is too much to expect every lawyer to have a first-hand knowledge of life in prison, the very least he or she could do, as a conscientious citizen and a professional man or woman, is to learn about it from a person qualified to speak on the subject—as the author of this little book undoubtedly is. He writes not only of various prisons in this country, but also of prisons abroad, to enable a better appraisal to be made. Thus, against an historical background and upon a comparative study, he bases constructive proposals for the future. Now when hospitals and prisons are full, as they are at present, we have seriously to think for the future—whether we should improve the treatment of disease and crime, with a view to reducing ill-health and anti-social behaviour, or simply continue to build better and bigger prisons and hospitals to house the growing numbers of delinquents and diseased in a decaying society. Gone are the days when immigrants from the Continent revitalised our racial stock and enriched our culture: Danes, Normans, Huguenots, Jews and Poles. From now on, it seems, we have to fall back on our own resources by way of redemption, regeneration, rehabilitation, reform—call the process what you will. Therefore, it is no longer—if it has ever been—a purely moral issue; it is a matter of urgent physical necessity as well; it is not only the personality of offenders that requires remoulding, we badly need their very persons—especially as so many of our best citizens continue to emigrate overseas. The authority and cohesion of the family have weakened, so an alternative to home influence must be found and fostered. The training and discipline to which prisoners are subjected result in comparatively small benefit, owing to the large size of modern prisons; accordingly, small prisons are advocated. Architectural changes in prison building are proposed, i.e., apart from a few security cells, the cubicle method in open dormitories has many advantages without any apparent drawbacks. Suitable work for the prisoners—either inside or outside prison walls—should be devised in co-operation with trade union and employers' organisations, with the primary object of helping the prisoner. And so on, and so forth. If this has whetted your appetite you should enjoy the book.

The Agricultural Landowner's Handbook on Taxation. Part II. Ninth Edition. Revised by F. G. HOLLAND, Solicitor. pp. 121. 1960. London: Country Landowners' Association. £1 1s. net. (Price to members 15s. 6d.)

The Country Landowners' Association, being a national organisation of owners of agricultural land, clearly aims this book at those who are, or ought to be, its members. This, the second part of the handbook, deals only with such lesser known varieties of taxation as rating, tithe, variable corn rents, land tax, land drainage rates and stamp and licence duties, and also includes a chapter on National Insurance and social services. Generally, the presentation is attractive and the style and content by no means always elementary. For a practitioner, the handbook suffers from containing only an outline of its subjects, but for its intended readers it affords a useful quick reference provided they remember that they will not find the whole truth within its covers. The short summary of stamp duty does indeed commence with a warning both that it is not exhaustive and against the preparation of documents by persons not legally qualified, but this warning is exceptional. The section on National Insurance is marred by a complete omission of any mention of the National Insurance Act, 1959. However, despite its brevity, this handbook may be an interesting introduction to the rarer byways of taxation even for those who do not own agricultural land.

Case Proceeding. By JULIAN PRESCOT. pp. 214. 1960. London: Arthur Barker, Ltd. 16s. net.

Those readers who enjoyed the two earlier books of its solicitor-author will not be disappointed by this sequel. The high standard of style and credibility is maintained and the incidents described are both entertaining and instructive. We particularly like Mr. Prescot's approach illustrated throughout the book and particularised in a passage near its end: "A solicitor shouldn't be someone who, from Olympian heights, dispenses advice like some oracle to the lesser mortals below. He's there to help human beings with human problems, to inject confidence into the faint-hearted, and comfort into those in distress." This book will help lay readers to understand what a solicitor's work may be like; that is more than can be said for some of the novels of recent years purporting to describe the practice and practitioners of the law.

Fieldhouse's Income Tax Simplified. Twenty-seventh Edition. By H. E. D. AYLING, A.A.C.C.A., A.S.C.T. pp. 79. 1960. Huddersfield: Arthur Fieldhouse, Ltd. 3s. 6d. net.

Essentially a practical introduction aimed at the beginner, this pocket-size book remains a handy bargain not to be disdained by the practitioner, its extreme simplicity being offset throughout by excellent worked examples.

Index to the Statutes in Force, covering the legislation to 31st December, 1959. pp. clxxxvii and 2147. 1960. London: Her Majesty's Stationery Office. Two volumes, £7 net.

The scheme of this invaluable index is well known. Under titles descriptive of recognised branches of the law it groups entries setting out in general terms the subject-matter of the enactments which constitute those branches. Against those entries are inserted regnal year citations of the current enactments which support each proposition indexed. The reader is thus guided to the existing general law on any subject in the statute book.

Honours and Appointments

Mr. MARSHALL WILLIAM INGHAM, assistant clerk to Plymouth Corporation, has been appointed assistant town clerk of Derby.

Mr. DAVID JEFFREYS JONES, Senior Resident Magistrate, Uganda, has been appointed Puisne Judge, Uganda.

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Hendon.—M. E. NEAL & SON, 102 Brent Street, N.W.4. Tel. Hendon 6123. Established 1919.

Ilford.—RANDALLS, F.R.I.C.S., Chartered Surveyors and Auctioneers (established 1884), 67 Cranbrook Road, Tel. VALentine 6272 (10 lines).

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Leytonstone.—COMPTON GUY, Est. 1899, Auctioneers, Surveyors and Valuers, 55 Harrington Road. Tel. Ley 1123. And at 1 Cambridge Park, Wanstead. Tel. Wan 5148; 13 The Broadway, Woodford Green. Tel. Buc 0464.

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Newbury.—DREWEATT, WATSON & BARTON, Est. 1759. Chartered Auctioneers, Estate Agents and Valuers, Market Place. Tel. 1.

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Slough.—BUCKLAND & SONS, 26 Mackenzie St. Tel. 21307. Also at Windsor, Reading and London, W.C.1.

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(*continued on p. xv*)

CORNWALL (*continued*)

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Darlington.—JAMES PRATT & SONS, F.V.I., Auctioneers, Valuers and Estate Agents, 40a High Row. Tel. 4831.

Darlington.—SANDERSON, TOWNEND & GILBERT Chartered Surveyors, 92 Bondgate.

NOTES OF CASES

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Court of Appeal

FENCING OF DANGEROUS MACHINERY IN FACTORY: LIABILITY FOR INJURY FROM BROKEN PARTS: FORESEEABILITY OF RISK

Close *v.* Steel Co. of Wales, Ltd.

Lord Evershed, M.R., Ormerod, L.J., and Davies, J.

2nd June, 1960

Appeal from Winn, J., sitting at Swansea Assizes.

The plaintiff was operating an electric drill when the bit shattered and he was struck and injured in the left eye by one or more pieces which flew out. In an action against his employers for damages for breach, *inter alia*, of their statutory duty under s. 14 (1) of the Factories Act, 1937, Winn, J., found that, although it was not uncommon for a bit to break, the risk of serious eye injury was "extremely remote" and that there was no evidence of prior accidents or that the defendants had reason to foresee any. He held that the duty under s. 14 (1) was solely to prevent the workman from coming into contact with the machine and not to protect him against injury caused by parts of the machine which flew out, and that, accordingly, the defendants were not liable to the plaintiff. The plaintiff appealed.

LORD EVERSHED, M.R., reading the judgment of the court, said that the construction of s. 14 (1) underlying *Nicholls* v. *F. Austin (Leyton), Ltd.* [1946] A.C. 493, had been qualified by the later cases of *Dickson* v. *Flack* [1953] 2 Q.B. 464, *Rutherford* v. *Glanville (R. E.) & Sons (Bovey Tracey), Ltd.* [1958] 1 W.L.R. 415, and *Newnham* v. *Taggart, Morgan & Coles, Ltd.* (19th July, 1956, unreported), and it should now be construed as imposing a duty on the employer both to prevent the workman from coming into contact with moving parts of a machine and to protect him from injury caused by ejected parts of the machine itself (as distinct from injury caused by ejected pieces of the material on which the machine was working). In the present case, however, the risk of grave injury was not reasonably foreseeable, and, therefore, the bit was not a "dangerous part of . . . machinery" within the scope of the statutory duty, and, accordingly, the defendants were not liable. Appeal dismissed.

APPEARANCES: *H. E. Hooson*, Q.C., and *Bruce Griffiths* (*Evill & Coleman*); *Alun Davies* (*Kenneth Brown, Baker, Baker*, for *Gee & Edwards*, Swansea).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law]

AGRICULTURAL TENANCY FOR TERM OF EIGHTEEN MONTHS NOT PROTECTED

Gladstone *v.* Bower

Sellers, Pearce and Devlin, L.JJ. 27th July, 1960

Appeal from Diplock, J. ([1959] 3 W.L.R. 815; 103 SOL. J. 835).

By an agreement in writing the landlord let to the tenant a farm and land for a term of eighteen months. After the expiry of the term by effluxion of time the tenant failed to give up possession, contending, *inter alia*, that by virtue of s. 2 of the Agricultural Holdings Act, 1948, the agreement took effect and continued to take effect as an agreement for the letting of an agricultural holding for a tenancy from year to year, under which she was entitled to remain in possession. On the landlord's claim for possession and mesne profits the trial judge held that the eighteen-month lease was not protected by the Act. The tenant appealed.

PEARCE, L.J., said that if the letting for a term of eighteen months was not a "letting for an interest less than a tenancy from year to year" under s. 2 (1) the tenant did not enjoy the protection of the Act. It was argued for the tenant that, by reason of the provisions of s. 23 (1), a tenancy from year to year under the Act, unlike such a tenancy at common law, was equivalent to a tenancy for two years, and that the standard of comparison was not the common-law tenancy from year to year but such a tenancy under the Act. That being so, the eighteen-month tenancy was within the protection of s. 2 (1) and it would follow that one would get universal and logical protection of agricultural holdings instead of a capricious protection that omitted to cover tenancies for more than one year and less than two. His lordship could see no justification for construing the words of s. 2 (1) in other than their normal sense. The words "a tenancy from year to year" must be taken to mean the tenancy known to the common law under that name, the minimum period of such tenancy being one year. The interest of such a tenancy had been clearly established and its characteristics had been defined by law. The words in s. 2 (1) could not be read as meaning some other interest not known to the law, whose identity could only be derived from the average effect of temporary fetters imposed by s. 23 (1) on the giving of certain notices to quit. His lordship arrived at this conclusion with reluctance but it seemed to him inevitable. If the gap in the protection given by the Act was accidental and led to evasions, it was for Parliament to remedy the matter. The appeal should be dismissed.

DEVLIN, L.J., concurring, said that he was concerned that an Act interpreted in the only possible way applied to tenancies over two years or under one year but not to those between one and two years. In his view it was simply *casus omissus* and the Act was defective; but the court could not repair the omission where, as here, there was no alternative construction.

SELLERS, L.J., delivered a concurring judgment. Appeal dismissed. Leave to appeal to the House of Lords.

APPEARANCES: *A. C. Cripps*, Q.C., *J. L. Le Quesne* and *David Jackson* (*Ellis & Fairbairn*); *Lionel A. Blundell*, Q.C., and *Victor Wellings* (*Theodore Goddard & Co.*, for *Llewellyn-Jones and Armon Ellis*, Rhyl).

[Reported by Miss M. M. HILL, Barrister-at-Law]

Chancery Division

MORTGAGE: LIMITATION OF ACTION: MORTGAGOR BANKRUPT: SECOND MORTGAGEE'S RIGHTS AGAINST MORTGAGOR BARRED: WHETHER ENTITLED TO REDEEM FIRST MORTGAGE: NOTICE TO TRUSTEE TO ELECT WHETHER TO REDEEM SECOND MORTGAGE: WHETHER EFFECTIVE

Cotterell *v.* Price

Buckley, J. 15th July, 1960

Adjourned summons.

In March, 1930, a mortgagor created a legal mortgage of certain property. In May, 1930, he created a second legal mortgage of (*inter alia*) the same property in favour of the plaintiff and five other persons to secure a loan of £2,321 12s. 5d. and interest. All interest due on the first mortgage was paid down to June, 1959, but no part of the principal sum or interest secured by the second mortgage was ever paid. In November, 1938, a receiving order in bankruptcy was made

against the mortgagor. No proof of the debt secured by the second mortgage was then submitted by the second mortgagees. The mortgagor did not obtain his discharge and in January, 1958, the plaintiff, who was then the only person entitled to the benefit of the second mortgage, submitted a proof of debt for £3,061 18s. 9d., and valued the security constituted by the second mortgage at £2,250. In May, 1958, the plaintiff served on the official receiver, as trustee in bankruptcy of the mortgagor, a notice under r. 13 (*c*) of Sched. II to the Bankruptcy Act, 1914, requiring him to elect whether he would or would not exercise his power of redeeming the security or of requiring it to be realised. No election was made by the official receiver within the six-month period allowed by the rule. In June, 1959, the plaintiff issued a summons claiming (*inter alia*) a declaration that his right to redeem the first mortgage was still subsisting. He conceded that, as against the mortgagor, his remedies by action were statute-barred.

BUCKLEY, J., said that the plaintiff contended that, although as against the mortgagor his rights to foreclose and sue for possession were barred, his right to redeem the first mortgage was unaffected. He said that he was an incumbrancer whose requisition was entitled to take precedence over any requisition of the mortgagor relating to the redemption of the first mortgage, by reason of s. 95 of the Law of Property Act, 1925. To bring himself within the provisions of that section he must show that he was an incumbrancer within the meaning of the Law of Property Act. That term was defined in s. 205 (1) (vii) in such a way as to mean a person entitled to the benefit of (*inter alia*) a legal mortgage, so that, in the present case, his right to be regarded as an incumbrancer within the meaning of the Act depended upon whether he was entitled to a legal mortgage of the property. On the plaintiff's right against the mortgagor becoming statute-barred, he lost all estate and interest in the property. He could no longer foreclose as against the mortgagor; he could no longer sue for possession; and as a result of s. 16 of the Limitation Act, 1939, his estate in the land had come to an end. The result of that was that he lost his status as a mortgagee. An equity of redemption was an incident of the status of mortgagor or puisne incumbrancer entitled to redeem the higher mortgage. It was part of the machinery provided by equity for enabling anyone who was mortgagor of land, or who stood in the shoes of the mortgagor of land, to redeem the pledge of the land. No one who had no estate in the land could have an equity of redemption; and, when the plaintiff lost his position as being, *vis-à-vis* the mortgagor, a mortgagee of the property, he ceased to be entitled to an equity of redemption. The plaintiff also contended that as a result of the notice under r. 13 (*c*) he had a statutory title (under the rules of and Schedules to the Bankruptcy Act) which enabled him to assert that he was in a position to redeem the first mortgage. The plaintiff's rights as second mortgagee to redeem the mortgage were not barred at the commencement of the bankruptcy. Time began to run in 1930 and the receiving order was made in November, 1938, so only a little over eight years had run at the time when the receiving order was made. The plaintiff said that the effect of the receiving order was to put an end to the operation of the Statutes of Limitation so far as any remedies within the bankruptcy were concerned so that, *vis-à-vis* the trustee in bankruptcy, the plaintiff remained a secured creditor entitled to adopt any of the courses open to him under rr. 10 to 13. The doctrine that time ceased to run under the Statutes of Limitation where a party became bankrupt had been dealt with in *In re Westby; ex parte Lancaster Banking Corpn.* (1879), 10 Ch. D. 776, and *In re Benzon* [1914] 2 Ch. 68. The importance of *Benzon* was that it was only "in the bankruptcy" that the statute ceased to operate. The doctrine did not have any effect on any rights or remedies which were unaffected by the bankruptcy. A mortgagee who relied upon his security retained and stood on rights which he had had before the bankruptcy and which were unaffected by it. Rules 10 to 13 did not regulate what a mortgagee was to do *qua* mortgagee; they only limited the extent to which he was entitled to prove in competion with unsecured creditors. Although the bankruptcy took away the rights of ordinary creditors to sue for their dues, the rights of secured creditors were unaffected and there was no reason why time should not continue to run as regards those rights which they had outside the bankruptcy. Many more than twelve years had elapsed since the right of action accrued and the plaintiff's right to sue to recover possession of the property had long been barred by virtue of s. 4 (3) of the Limitation Act before the date in 1958 when he served the notice under r. 13. Therefore, in 1958, the plaintiff was no longer a secured creditor within the meaning of Sched. II to the Bankruptcy Act and at that date it was not open to him to give the notice, which was accordingly of no effect.

APPEARANCES: *John Bradburn* (*Wrentmore & Son*, for *Philip Evans & Co.*, Bournemouth); *P. R. De L. Giffard* (*T. R. Plumer, Price & Beswick*); *Muir Hunter* (*Harper, Winstanley & Fish*).

[Reported by Miss V. A. MOXON, Barrister-at-Law]

COMPANY: SPECIAL RESOLUTION: SHORT NOTICE

***In re* Pearce, Duff & Co., Ltd.**

Buckley, J. 25th July, 1960

Petition.

A company sent to its members short notice of a resolution to be passed at an extraordinary general meeting as a special resolution for the reduction of capital. The directors later wished to propose a second resolution for the payment of a premium to the holders of preference shares paid off on the reduction and, appreciating that they could not give the statutory period of notice for the second resolution, purporting to act pursuant to s. 141 (2) of the Companies Act, 1948, they requested the shareholders at the meeting to sign a consent to the second resolution being proposed, notwithstanding that the statutory notice had not been given. The consent was signed at the meeting by shareholders being a majority together holding more than 95 per cent. in nominal value of the shares. Subsequently, the company obtained the written consent of every shareholder to both resolutions being treated as valid special resolutions. A petition for confirmation of reduction of capital was presented on the footing that the written consent of every shareholder to treat both resolutions as valid special resolutions had been obtained.

BUCKLEY, J., said that s. 141 (2) of the Companies Act, 1948, required twenty-one days' notice in the case of a special resolution, with a proviso as to resolutions being passed on short notice. That proviso required the persons who agreed to a resolution being passed on short notice to appreciate that the resolution was being passed on short notice and to agree to its being so passed with that consideration in their minds. It was clear that the shareholders who signed the consent did not have it in their minds at all that the initial notice was defective in point of time. That consent, therefore, did not cure the matter. However, since the date of the meeting, the consent of every shareholder had been obtained to the resolutions being treated as valid special resolutions and the petition has been presented upon that footing. He had to consider not whether the resolutions bound the company as special resolutions but whether any shareholder could then say that the resolutions had not been properly passed as valid special resolutions. Having regard to the 100 per cent. consent which has been obtained to the resolutions being treated as valid and to the fact that the petition had been presented upon that footing, he did not think that the court ought to hear any of the shareholders to say that the

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Norwich and East Anglia.—K. H. FIELDING & SON (J. L. Fielding, F.R.I.C.S., F.A.I.), Chartered Surveyors, etc., 1 Upper King Street, Norwich. Tel. 22980.

West Norfolk.—CRUSO & WILKIN, Chartered Auctioneers and Estate Agents, 27 Tuesday Market Place, King's Lynn. Tel. King's Lynn 3111/2.

NORTHAMPTONSHIRE

Northampton and Daventry.—MERRY, SONS & CO., LTD., Auctioneers, Valuers and Estate Agents, 9 Fish Street, Northampton. Tel. 136. 33 Sheaf Street, Daventry. Tel. 336.

Northampton and District.—WOODS & CO., F.A.I., Chartered Auctioneers and Estate Agents, Valuers, 19 Castilian Street, Northampton. Tel. 3300/1. Established 85 years.

Peterborough and District.—DAKING & DAKING. Est. 1887. Auctioneers, Valuers, Surveyors and Estate Agents, Broadway, Peterborough. Tel. 5245/6.

Peterborough and District.—FOX & VERGETTE, Auctioneers, Valuers, Surveyors and Estate Agents, 16 Priestgate. Tel. 4261/2. Est. over 150 years.

Peterborough and Adjoining Counties.—NORMAN WRIGHT & PARTNERS, Surveyors, 26 Priestgate, Peterborough. Tel. 5695/6.

(*continued on p. xvii*)

NORTHUMBERLAND

Newcastle upon Tyne, covering the North.—HINDMARSH, HEPPELL & BOURN (Est. 1862), Chartered Auctioneers and Estate Agents, Surveyors, 61 Westgate Road, Newcastle upon Tyne. And at Wallsend-on-Tyne.

NORTHUMBERLAND AND DURHAM

HINDMARSH & PARTNERS, Chartered Surveyors, Valuers, Auctioneers and Estate Agents, 49 Park View, Whitley Bay (Tel. 2351/2), 107 Northumberland St., Newcastle (Tel. 610081 (4 lines)). And at Gateshead and Alnwick.

Newcastle.—DAVID A. LARMOUR & SON, F.R.I.C.S., F.A.I., Saville Row. Tel. Newcastle 20727/8.

WALLHEAD GRAY & COATES, Chartered Auctioneers, and Estate Agents, Surveyors and Valuers, 84 Pilgrim Street, Newcastle. (Tel. 27471/2.) 75 West Street, Gateshead. (Tel. 72197.) 7 Priestpopple, Hexham. (Tel. 302.) 26 Frederick Street, Sunderland. (Tel. 2544.)

NOTTINGHAMSHIRE

Newark.—EDWARD BAILEY & SON, F.A.I., Chartered Auctioneers and Estate Agents, Surveyors and Valuers, 7 Kirkgate, Newark. Tel. 39.

Nottingham.—ROBERT CLARKE & CO., Chartered Surveyors and Rating Valuers, Oxford Street. Tel. 42534/5.

Nottingham.—WALKER, WALTON & HANSON, Chartered Surveyors and Valuers, Chartered Auctioneers and Estate Agents, Byard Lane. Est. 1841. Tel. Nottingham 54272 (7 lines).

Retford.—HENRY SPENCER & SONS, Auctioneers, 20 The Square, Retford, Notts. Tel. 531/2. And at 4 Paradise Street, Sheffield. Tel. 25206. And 91 Bridge Street, Worksop. Tel. 2654.

OXFORDSHIRE

Bicester, Thame and Oxford.—E. P. MESSENGER & SON, Chartered Surveyors, Auctioneers, Valuers, etc. Thame 263/4; Bicester 10; and Oxford 47281.

Oxford and District.—BUCKELL & BALLARD. Est. 1887. R. B. Ballard, F.A.L.P.A., H. I. F. Ryan, F.R.I.C.S., F.A.I., H. S. Ballard, A.R.I.C.S., F.A.I., 58 Cornmarket Street, Oxford. Tel. 44151, and at Wallingford, Berks. Tel. 3205.

Oxford, Banbury and surrounding districts.—E. J. BROOKS & SON, F.A.I. (Established 1840), Chartered Auctioneers and Estate Agents, Surveyors and Valuers, "Gloucester House," Beaumont Street, Oxford. (Tel. 4535/6), and 54 Broad Street, Banbury (Tel. 2670).

Thame and District.—PERCY BLACK & CO., Chartered Surveyors, Chartered Auctioneers and Estate Agents, 60 North Street. Tel. 288.

SHROPSHIRE

Craven Arms.—JACKSON & McCARTNEY, Chartered Auctioneers, Valuers and Estate Agents. Tel. 2185.

Shrewsbury.—HALL, WATERIDGE & OWEN, LTD., Chartered Auctioneers, Valuers and Estate Agents. Tel. 2081.

Shrewsbury and South Shropshire.—DEAKIN & COTTERILL, 8 Wyle Cop, Shrewsbury, Auctioneers, Estate Agents and Valuers. Tel. 5306 and 2313. And at Church Stretton.

Wellington.—BARBER & SON, Auctioneers, Valuers, Surveyors and Estate Agents, 1 Church Street. Tel. 27 and 444 Wellington.

Whitchurch.—JOSEPH WRIGHT, Auctioneers, Valuers and Estate Agents, 15 Watergate Street, Whitchurch. Tel. 62.

SOMERSET

Bath and District and Surrounding Counties.—COWARD, JAMES & CO., incorporating FORTT, HATT & BILLINGS (Est. 1903), Surveyors, Auctioneers and Estate Agents, Special Probate Department, New Bond Street Chambers, 14 New Bond Street, Bath. Tel. Bath 3150, 3584, 4268 and 61360.

Bath and District.—Estate Agents, Auctioneers and Valuers. Valuations for Probate, Mortgage, etc. HALLETT & CO., 3 Wood Street, Queen Square, Bath. Tel. 3779 and 2118.

Bath and District.—JOLLY & SON, LTD. (Est. 1825.) Estate Agents and Valuers, Funeral Directors, Probate Valuers, Chatrell Auction Rooms, Milsom Street, Bath. (Tel. 3201.)

Bath, Bristol and Districts.—LOUIS POWELL & CO., Incorporated Auctioneers, Estate Agents and Valuers, 1 Princes Buildings, Bath. Tel. 2127.

Bath and the West.—CRISP'S ESTATE AGENCY (C. Cowley, F.V.I., incorporated Surveyor and Valuer, J. L. Cowley, A.A.I., Chartered Auctioneer and Estate Agent) (Est. 1879), Abbey Chambers, York Street, Bath. Tel. 3606 and 61706.

Crewkerne.—15 miles radius.—TAYLOR & CO., Auctioneers, Valuers, Surveyors, Estate Agents. Tel. 546.

Taunton and District.—C. R. MORRIS, SONS AND PEARD, Land Agents, Surveyors, Valuers, Auctioneers, 6a Hammet Street. Tel. 2546. North Curry. Tel 319.

resolutions had not been validly passed. In those circumstances, the case being a rather exceptional one, he was entitled to regard the special resolution as sufficient basis for the reduction which the court was asked to confirm; and accordingly, subject to being satisfied on the evidence as to excess of wants, he would confirm the reduction.

APPEARANCE: *Peter Oliver* (*Kingsford, Dorman & Co.*).

[Reported by Miss M. G. THOMAS, Barrister-at-Law]

Queen's Bench Division

COMPANY: POWERS: WHETHER PROPERTY DEVELOPMENT *ULTRA VIRES* TRADING COMPANY

Anglo-Overseas Agencies, Ltd. *v.* Green and Another

Salmon, J. 20th July, 1960

Trial of a preliminary issue.

The objects for which a company incorporated under the Companies Act, 1948, was established were set out in cl. 3 of the company's memorandum of association, as follows: "(A) To carry on business as importers, exporters, buyers and sellers of, and dealers in, merchandise of all descriptions . . . (B) To carry on business as exporters and importers of, and dealers in, and agents for, home and foreign and colonial goods and produce of all descriptions . . . (E) To obtain the grant of, purchase, or otherwise acquire any concessions, contracts, rights, patents, privileges, monopolies, undertakings, or businesses, or any right or option in relation thereto, and to perform and fulfil the terms and conditions thereof, and to carry the same into effect, operate thereunder, develop . . . maintain and sell, dispose of and deal with the same." There followed a number of other objects and the clause concluded with the following declaration: "And it is hereby declared that . . . the intention is that the objects specified in any paragraph of this clause shall, except where otherwise expressed in such paragraph, be in nowise limited or restricted by reference to or inference from the terms of any other paragraph or the name of the company." The company claimed damages against the defendants, an architect and a firm of estate agents, alleging, *inter alia*, breach of agreements by the defendants to assist and render certain services in connection with the obtaining by the company of a building lease of a site in a shopping centre for a large store, shops and business development. The defendants denied the company's allegations and further objected that the carrying on of any such business and the making of any such agreements would be *ultra vires* the company and the objects for which it was established. The latter contention was ordered to be tried as a preliminary issue.

SALMON, J., said that the defendants had relied on the "main objects" rule of construction that where one paragraph or the first two or three paragraphs of an objects clause in a memorandum of association appeared to embody the "main object" of a company, all the other paragraphs were treated as merely ancillary to that main object and as limited or controlled by it. Paragraphs (A) and (B) of this clause made it plain that the plaintiff company's main object was to act as importers and exporters of a wide variety of goods, but they had relied on the concluding paragraph of the clause. In *Stephens* v. *Mysore Reefs (Kagundy) Mining Co., Ltd.* [1902] 1 Ch. 745, Swinfen Eady, J., held that that very form of words did not exclude the "main objects" rule. But if the words did not mean that each paragraph of the objects clause was to be read in isolation and was not to be limited or restricted by any other paragraph, his lordship did not know what they did mean. Any decision of Swinfen Eady, J., carried great weight, but for the last forty-two years the *Mysore Reefs* case had been generally regarded as overruled by the House of Lords in *Cotman* v. *Brougham* [1918] A.C. 514 (where the form of words was different), and as no longer law. Even if the *Mysore Reefs* case had not been overruled, his lordship could not regard it as preventing him from giving effect to what in his view was the plain meaning of the words, and he held that they did exclude the main objects rule. The words of para. (E) were wide enough to cover the project on which the plaintiff company engaged the defendants and, accordingly, that project was not *ultra vires* the company. He decided the issue against the defendants. Judgment accordingly.

APPEARANCES: *Neville Faulks*, Q.C., and *Morris Finer* (*D. J. Freeman & Fraser*); *C. A. Settle*, Q.C., and *Frederick Hallis* (*Kaufman & Seigal*).

[Reported by Miss J. F. LAWS, Barrister-at-Law]

IN WESTMINSTER AND WHITEHALL

STATUTORY INSTRUMENTS

Factories Act, 1959 (Commencement No. 3) Order, 1960. (S.I. 1960 No. 1611 (C.15).) 4d. See p. 768, *post*.

First-Aid (Standard of Training) Order, 1960. (S.I. 1960 No. 1612.) 5d. See p. 768, *post*.

Fixed Penalty (Areas) Order, 1960. (S.I. 1960 No. 1598.) 4d. See p. 729, *ante*.

Fixed Penalty (Offences) Order, 1960. (S.I. 1960 No. 1599.) 4d. See p. 729, *ante*.

Fixed Penalty (Procedure) Regulations, 1960. (S.I. 1960 No. 1600.) 5d. See p. 729, *ante*.

Food Hygiene (Docks, Carriers, etc.) Regulations, 1960. (S.I. 1960 No. 1602.) 8d. See p. 768, *post*.

Food Hygiene (General) Regulations, 1960. (S.I. 1960 No. 1601.) 11d. See p. 768, *post*.

Lancaster By-Pass Motorway, Connecting Roads Special Scheme, 1960. (S.I. 1960 No. 1594.) 5d.

London–Bristol Trunk Road (Box Bridge Diversion) Order, 1960. (S.I. 1960 No. 1590.) 5d.

London–Folkestone–Dover Trunk Road (Swanley By-Pass) Order, 1960. (S.I. 1960 No. 1607.) 4d.

London–Folkestone–Dover Trunk Road (Swanley Junction By-Pass) (Revocation) Order, 1960. (S.I. 1960 No. 1608.) 4d.

London Traffic (Prescribed Routes) (Deptford) Regulations, 1960. (S.I. 1960 No. 1636.) 4d.

Police (Grant) (No. 2) Order, 1960. (S.I. 1960 No. 1597.) 4d. See p. 729, *ante*.

Police Regulations, 1960. (S.I. 1960 No. 1605.) 4d.

Police (Scotland) Amendment (No. 2) Regulations, 1960. (S.I. 1960 No. 1622 (S.80).) 5d.

Refund of Duty on Hackney Carriage Licences (Prescribed Date for Applications) Order, 1960. (S.I. 1960 No. 1646.) 4d.

Registration (Births, Still-births and Deaths) (Prescription of Forms) Regulations, 1960. (S.I. 1960 No. 1603.) 5d. See p. 768, *post*.

Registration (Births, Still-births, Deaths and Marriages) Amendment Regulations, 1960. (S.I. 1960 No. 1604.) 6d. See p. 768, *post*.

Retention of Railway across Highways (Shropshire) (No. 1) Order, 1951 (Revocation) Order, 1960. (S.I. 1960 No. 1581.) 4d.

Road Vehicles (Excise) (Prescribed Particulars) (Amendment) (No. 2) Regulations, 1960. (S.I. 1960 No. 1647.) 4d.

Road Vehicles (Registration and Licensing) (Amendment) Regulations, 1960. (S.I. 1960 No. 1648.) 5d.

Scarborough Water (No. 2) Order, 1960. (S.I. 1960 No. 1583.) 8d.

Stopping up of Highways Orders, 1960:—

City and County Borough of Bath (No. 3). (S.I. 1960 No. 1589.) 5d.
City and County Borough of Bradford (No. 6). (S.I. 1960 No. 1617.) 5d.
County of Buckingham (No. 4). (S.I. 1960 No. 1620.) 5d.
County of Buckingham (No. 5). (S.I. 1960 No. 1586.) 5d.
County of Buckingham (No. 6). (S.I. 1960 No. 1577.) 5d.
County of Cambridge (No. 3). (S.I. 1960 No. 1619.) 5d.
County of Chester (No. 15). (S.I. 1960 No. 1630.) 5d.
County Borough of Dewsbury (No. 1). (S.I. 1960 No. 1628.) 5d.
County of Durham (No. 20). (S.I. 1960 No. 1625.) 5d.
County of Essex (No. 16). (S.I. 1960 No. 1591.) 5d.
County of Flint (No. 1). (S.I. 1960 No. 1578.) 5d.
County of Hertford (No. 6). (S.I. 1960 No. 1587.) 5d.
County of Hertford (No. 7). (S.I. 1960 No. 1579.) 5d.
County of Nottingham (No. 6). (S.I. 1960 No. 1626.) 5d.
County of Somerset (No. 6). (S.I. 1960 No. 1629.) 5d.
County of Somerset (No. 7). (S.I. 1960 No. 1615.) 5d.
County of Somerset (No. 8). (S.I. 1960 No. 1627.) 5d.
County of Worcester (No. 10). (S.I. 1960 No. 1631.) 5d.
County of York, West Riding (No. 17). (S.I. 1960 No. 1606.) 5d.
County of York, West Riding (No. 18). (S.I. 1960 No. 1580.) 5d.
County of York, West Riding (No. 19). (S.I. 1960 No. 1592.) 5d.
County of York, West Riding (No. 20). (S.I. 1960 No. 1593.) 5d.
County of York, West Riding (No. 21). (S.I. 1960 No. 1616.) 5d.
County of York, West Riding (No. 22). (S.I. 1960 No. 1618.) 5d.

Tribunals and Inquiries (Finance Act Tribunal) Order, 1960. (S.I. 1960 No. 1668.) 4d.

This order brings under the supervision of the Council on Tribunals the tribunal constituted for the purposes of the Finance Act, 1960, s. 28.

Wages Regulation (Unlicensed Place of Refreshment) Order, 1960. (S.I. 1960 No. 1588.) 1s. 11d.

West of Slough–West of Maidenhead (Connecting Roads) Special Roads Scheme, 1960. (S.I. 1960 No. 1595.) 5d.

SELECTED APPOINTED DAYS

September

15th — Fixed Penalty (Areas) Order, 1960. (S.I. 1960 No. 1598.)
Fixed Penalty (Offences) Order, 1960. (S.I. 1960 No. 1599.)
Fixed Penalty (Procedure) Regulations, 1960. (S.I. 1960 No. 1600.)
Functions of Traffic Wardens Order, 1960. (S.I. 1960 No. 1582.)
Police (Grant) (No. 2) Order, 1960. (S.I. 1960 No. 1597.)

16th — Refund of Duty on Hackney Carriage Licences Prescribed Date for Applications) Order, 1960. (S.I. 1960 No. 1646.)

19th — Foreign Compensation (Hungary) (Amendment) Order, 1960. (S.I. 1960 No. 1659.)
National Insurance (Contributions) Amendment (No. 2) Regulations, 1960. (S.I. 1960 No. 1285.)
National Insurance (General Benefit) Amendment Regulations, 1960. (S.I. 1960 No. 1282.)
National Insurance (Hospital In-Patients) Amendment Regulations, 1960. (S.I. 1960 No. 1283.)
National Insurance (Industrial Injuries) (Benefit) Amendment (No. 2) Regulations, 1960. (S.I. 1960 No. 1284.)
National Insurance (Unemployment and Sickness Benefit) Amendment (No. 2) Regulations, 1960. (S.I. 1960 No. 1286.)

21st — Tribunals and Inquiries (Finance Act Tribunal) Order, 1960. (S.I. 1960 No. 1668.)

29th — Clean Rivers (Estuaries and Tidal Waters) Act, 1960.

30th — Betting and Gaming Act, 1960, ss. 2 (2), 4 (2), (3), (4), 8, 10, 19 (5), 27, 28, 29 (4), 30, 31 (1), (2), Scheds. I (except for para. 8 purposes) and III.

POINTS IN PRACTICE

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, London, E.C.4. They should be brief, typewritten in duplicate, and accompanied by the name and address of the sender on a separate sheet, together with a stamped addressed envelope. Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all

Title—Conveyance Bringing Will on to Title

Q. We are acting for purchasers of land from a vendor who took a conveyance from trustees who were recited to have held the land "as trustees upon trust to sell the same." The facts are that in 1937 the land was conveyed to the trustees "upon the trusts applicable to the residue of the real estate appointed to the trustees of the will dated 13th May, 1920, of *A* and declared and contained in the said will." One of the trustees died in 1947 and there followed an appointment of a new trustee jointly with the surviving trustee "for the purposes of the said will of *A* or such of the same as were then subsisting," but the appointment did not contain any vesting provisions. Then followed the conveyance to the vendor in 1953, which recites that by virtue of the original conveyance to the trustees and the appointment of new trustee the trustees were seised of the property "upon trust to sell the same." We made a requisition that the 1937 conveyance was not to "trustees for sale" as recited in the 1953 conveyance and asked for an abstract of the will of *A*, taking the view that if the will contained a strict settlement the 1937 transaction should have been by way of a subsidiary vesting deed. The vendor's solicitors replied that there was an implied trust for sale as the conveyance was made to two separate persons, and they are relying on ss. 34 and 35 of the Law of Property Act, 1925, maintaining that it is clear that the legal estate was conveyed to the vendor under the 1953 conveyance. Is the will of *A* "behind the curtain"? Was there an implied trust for sale under the 1937 conveyance and did the legal estate pass to the vendor under the 1953 conveyance? If not, what steps can now be taken to remedy the defect (if any)?

A. (1.) We do not consider that the will of *A* is "behind the curtain." On the contrary, in our view the wording of the conveyance of 1937 expressly brought the will on to the title. (2.) The Law of Property Act, 1925, s. 34, relates only to conveyances in *undivided shares* (i.e., as tenants in common). As there were no words of severance, the conveyance of 1937 was to the trustees as joint tenants. Therefore, neither s. 34 nor s. 35 is applicable. Similarly, we do not think s. 36 (1) can apply as it refers to a case where a legal estate is "*beneficially* limited to . . . persons as joint tenants." See further Emmet on Title, 14th ed., vol. 1, pp. 321, 362, 375 et seq. (3.) For these reasons we think the terms of the will must be examined. We cannot comment further with accuracy until the terms of the will are known. It may be, for instance, that the will contained a trust for sale of land and enabled other land to be purchased as an investment. In that case the Law of Property Act, 1925, s. 32, requires purchased land to be held on trust for sale.

Income Tax—Exemption—Charity—Profit of Trade Carried on by Y.M.C.A.

Q. I am concerned on behalf of a shopkeeper whose main business is the sale of confectionery (sweets and chocolates), ice-cream and cigarettes. The shop is situated near the local Y.M.C.A. which is recognised as a charity and as such is exempt from income tax. One of the activities of that Y.M.C.A. is the sale of sweets, ice-cream and cigarettes at its café not only to members but also to persons in the neighbourhood who are not members. My client objects to this trading with non-members (some of which takes place after the usual shop closing time) and

REGISTER OF
Auctioneers, Valuers, Surveyors, Land and Estate Agents

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Weston-super-Mare and District.—MASTERS & CO., F.R.I.C.S., F.A.I., Chartered Surveyors, Chartered Auctioneers and Estate Agents, 5 High Street. Tel. 6443/4.

Yeovil and District.—PALMER, SNELL & CO., Chartered Auctioneers and Estate Agents, Surveyors and Valuers. Tel. 25 and 1796. London Office: 130 Mount Street, W.1.

STAFFORDSHIRE

Stoke-on-Trent and North Staffs.—CHARLES BUTTERS & SONS, Established 1856. Chartered Auctioneers, Surveyors, Valuers and Estate Agents, Trinity Buildings, Hanley, Stoke-on-Trent. Tel. 2138/9. Also at Leek.

SUFFOLK

Bury St. Edmunds and East Anglia.—LACY SCOTT AND SONS, 3 Hatter Street, Bury St. Edmunds. Phone 43 and 692.

Ipswich and East Anglia.—SPURLINGS & HEMPSON (Est. 1780), Chartered Surveyors, Chartered Auctioneers, 26 Princes Street, Ipswich. Tel. 51807/8.

Ipswich and East Anglia.—WOODCOCK & SON, 16 Arcade Street, Ipswich. Tel. 54352 (2 lines). Specialists in Selling Country Property and Farms. Established 1850.

Woodbridge and East Suffolk.—ARNOTT & CALVER, Auctioneers and Valuers. Est. 1870. Tel. 179.

SURREY

Addiscombe, Shirley, Croydon.—MILLER, WILKINS AND CO., Auctioneers, Surveyors and Valuers, 191 Lower Addiscombe Road. Tel. ADDiscombe 2233/4; and 142 Wickham Road, Shirley. Tel. ADDiscombe 4021.

Ashtead and Leatherhead.—DOUGLAS & CO., F.A.L.P.A. Principal Office: 8 High Street, Leatherhead. Tel. 4136/7 (5 Offices).

Camberley (Hants and Berks Borders).—SADLER AND BAKER, Chartered Auctioneers and Estate Agents, 95 High Street. Est. 1880. Tel. 1619.

Caterham and District, Sanderstead to Purley.—J. C. O'BRIEN, Station Avenue, Caterham. Tel. 4255 and 348. Limpsfield Road, Sanderstead. Tel. 4426.

Cobham.—EWBANK & CO., in association with Mann and Co. Est. 1891. Tel. 47. Offices throughout West Surrey.

Coulsdon.—SINDEN, TOMKINS & KING, F.A.L.P.A., Valuers, Surveyors and Estate Agents, 26 Chipstead Valley Road. Tel. UPLands 0600.

Croydon.—BLAKE, SON & WILLIAMS. Est. 1798. Chartered Auctioneers and Estate Agents, Surveyors and Valuers, 51 High Street, Croydon. CROydon 7155/6.

Croydon, Addiscombe and Wallington.—BOWDITCH & GRANT. (Est. 1881). Surveyors, Valuers, Auctioneers, 103/105 George Street, Croydon. Tel. CRO 0138/9.

Croydon and District.—JOHN P. DICKINS & SONS, Surveyors, Valuers and Estate Agents. Est. 1882. 2 and 4 George Street, Croydon. CROydon 3128/9/30.

Croydon and London.—HAROLD WILLIAMS AND PARTNERS, Chartered Surveyors, Valuers, Chartered Auctioneers and Estate Agents, 80 High Street, Croydon. Tel. Croydon 1931. And at Temple Chambers, Temple Avenue, E.C.4. Tel. Ludgate Circus 9288.

Croydon and Epsom.—ROBT. W. FULLER, MOON AND FULLER, Chartered Surveyors, Valuers and Auctioneers, 85 High Street, Croydon (CRO 3124/6), and at Epsom (communications to Croydon Office). Established 1824.

Croydon and Sutton.—SAINT, SYMINGTON AND STEDMAN, Surveyors, Auctioneers and Valuers. 106 High Street, Croydon. Tel. CRO 2216/7. And at 6 Cheam Road, Sutton. Tel. VIG 7616/7.

Dorking.—ARNOLD & SON, Auctioneers & Surveyors, 171 High Street and branches. Est. 1855. Tel. 2201/2.

Dorking.—WHITE & SONS, 104 High Street. Agricultural and General Surveyors and Valuers. Tel. 3255.

Dorking & London.—PEARSON, COLE & SHORLAND, Auction and Estate Offices, Dorking. Tel. 3897/8. Surveyors, Valuers and Auctioneers; and at 2 Hans Road, S.W.3. Tel. Kensington 0066.

Dorking, Bookham and Effingham.—CUBITT AND WEST. Tel. Dorking 2212, Bookham 2744. Valuers, Surveyors, Estate Agents.

Dorking and Reigate.—A. R. & J. GASCOIGNE-PEES, F.A.L.P.A., Auctioneers, Estate Agents and Surveyors, 258/260 High Street, Dorking. Tel. 4071/2. 6 Church Street, Reigate. Tel. 4422/3. And at Leatherhead and Epsom.

Epsom and Ewell.—DOUGLAS & CO., F.A.L.P.A. Principal Office: 10 High St., Epsom. Tel. 2362/4. (5 Offices, Ewell to Leatherhead).

Epsom and Leatherhead.—A. R. & J. GASCOIGNE-PEES, F.A.L.P.A., Auctioneers, Estate Agents and Surveyors, 21 High Street, Epsom. Tel. 4045/6. 4 Bridge Street, Leatherhead. Tel. 4133/4. And at Reigate and Dorking.

Esher.—EWBANK & CO., in association with Mann & Co. Est. 1891. Tel. 3537/8. Offices throughout West Surrey.

Esher and District.—W. J. BELL & SON, Chartered Surveyors, Valuers, Auctioneers and Estate Agents, 51 High Street. Tel. Esher 12.

SURREY (*continued*)

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Farnham.—H. B. BAVERSTOCK & SON, Chartered Auctioneers and Estate Agents, 4 Castle Street. Tel. 5274 (2 lines).

Farnham.—CUBITT & WEST. Tel. Farnham 5261. Valuers, Surveyors, Estate Agents.

Farnham.—EGGAR & CO., incorporating Curtis & Watson, Surveyors, Auctioneers, Land & Estate Agents, 74 Castle Street. Tel. 6221/3. And at Alton and Basingstoke, Hants.

Farnham.—GERMAN, ADDY & CO. (Est. 1903). Chartered Auctioneers and Estate Agents, Surveyors and Valuers, 111 West Street. Tel. 5283/4.

Farnham.—WHITEHEAD & WHITEHEAD, amal. HEWETT & LEE, 32 South Street. (Tel. 6277).

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Guildford.—MANN & CO., Est. 1891, 22 Epsom Road. Tel. 62911/2. Offices throughout West Surrey.

Guildford.—MESSENGER, MORGAN & MAY, Chartered Surveyors, 8 Quarry Street. Tel. 2992/4.

Guildford.—WHITEHEAD & WHITEHEAD, amal. HEWETT & LEE, 144 High Street. (Tel. 2811/2).

Haslemere.—H. B. BAVERSTOCK & SON, Chartered Auctioneers and Estate Agents, 20 High Street. Tel. 1207.

Haslemere and Hindhead.—CUBITT & WEST. Tel. Haslemere 2345/6/7, Hindhead 63. Valuers, Surveyors, Estate Agents.

Kingston.—A. G. BONSOR, STEVENS & CO., Est. 1899, 82 Eden Street. Tel. KIN 0022.

Kingston.—NIGHTINGALE, PAGE & BENNETT, Est. 1825, Chartered Surveyors, 18 Eden Street. Tel. KIN 3356.

Kingston upon Thames and Area.—BENTALLS ESTATE OFFICES (L. J. Smith, F.A.L.P.A., P. F. Parkinson, B.Sc., A.A.L.P.A.), Wood St. KIN 1001. Sales, surveys, property and chattel valuations, lettings, management.

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Walton.—MANN & CO., Est. 1891, 38 High Street. Tel. 2331/2. Offices throughout West Surrey.

Walton and Weybridge.—HIGBY & CHARD (Consultants: George Geen, M.A., F.R.I.C.S., V. C. Lawrence, F.R.I.C.S.), 45 High Street, Walton-on-Thames. Tel. 20487/8.

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Weybridge and District.—WATERER & SONS, Chartered Auctioneers and Estate Agents, Surveyors, etc. Tel. 3838/9.

(*continued on p. xviii*)

SURREY (*continued*)

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Bexhill-on-Sea.—JOHN BRAY & SONS (Est. 1864), Estate Agents, Auctioneers and Valuers, 1 Devonshire Square. Tel. 14.

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Brighton.—H. D. S. STILES & CO., F.R.I.C.S., F.A.I. (special rating diploma), 6 Pavilion Buildings. Tel. Brighton 23244 (4 lines). 10 King's Bench Walk, Temple E.C.4. Tel. Central 5356. 3 The Steyne, Worthing. Tel. Worthing 9192/3.

Brighton.—FRANK STONE & PARTNERS, F.A.L.P.A., 84 Queen's Road. Tel. Brighton 29252/3.

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Chichester and Bognor Regis.—WHITEHEAD & WHITEHEAD, Chartered Auctioneers and Estate Agents, South Street, Chichester. Tel. 3031 (5 lines). Station Road, Bognor Regis. Tel. 2237/8.

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Crowborough.—DONALD BEALE & CO., Auctioneers, Surveyors and Valuers. The Broadway. Tel. Crowborough 3333.

Eastbourne.—FRANK H. BUDD, LTD., Auctioneers, Surveyors, Valuers, 1 Bolton Road. Tel. 1860.

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Eastbourne.—HEFFORD & HOLMES, F.A.I., Chartered Auctioneers and Estate Agents, 51 Gildredge Road. Tel. Eastbourne 7840.

Eastbourne.—OAKDEN & CO., Estate Agents, Auctioneers and Valuers, 24 Cornfield Road. Est. 1897. Tel. 1234/5.

Eastbourne and District.—FARNHAM & CO., Auctioneers, Estate Agents and Valuers, 6 Terminus Road, Eastbourne. Tel. 4433/4/5. Branch at 87 Eastbourne Road, Lower Willingdon, and 4 Grand Parade, Polegate.

East Grinstead.—Messrs. P. J. MAY (P. J. May and A. L. Apthorp, F.R.I.C.S., F.A.I., M.R.San.I.), 2 London Road. Tel. East Grinstead 315/6.

East Grinstead.—TURNER, RUDGE & TURNER, Chartered Surveyors. Tel. East Grinstead 700/1.

Hassocks and Mid-Sussex.—AYLING & STRUDWICK, Chartered Surveyors. Tel. Hassocks 982/3.

Hastings, St. Leonards and East Sussex.—DYER & OVERTON (H. B. Dyer, D.S.O., F.R.I.C.S., F.A.I.; F. R. Hynard, F.R.I.C.S.), Consultant Chartered Surveyors. Estd. 1892. 6-7 Havelock Road, Hastings. Tel. 5661 (3 lines).

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Haywards Heath and District.—DAY & SONS, Auctioneers and Surveyors, 115 South Road. Tel. 1580. And at Brighton and Hove.

Haywards Heath and Mid-Sussex.—BRADLEY AND VAUGHAN, Chartered Auctioneers and Estate Agents. Tel. 91.

Horsham.—KING & CHASEMORE, Chartered Surveyors, Auctioneers, Valuers, Land and Estate Agents. Tel. Horsham 3355 (3 lines).

Horsham.—WELLER & CO., Surveyors, Auctioneers, Valuers, Estate Agents. Tel. Horsham 3311. And at Guildford, Cranleigh and Henfield.

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Hove and District.—WHITLOCK & HEAPS, Incorporated Auctioneers, Estate Agents, Surveyors and Valuers, 65 Sackville Road. Tel. Hove 31822.

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Lancing.—A. C. DRAYCOTT, Chartered Auctioneers and Estate Agents, 8-14 South Street, Lancing, Sussex. Tel. Lancing 2828.

Lewes and Mid-Sussex.—CLIFFORD DANN, B.Sc., F.R.I.C.S., F.A.I., Fitzroy House, Lewes. Tel. 750. And at Ditchling and Hurstpierpoint.

Seaford.—W. G. F. SWAYNE, F.A.I., Chartered Auctioneer and Estate Agent, Surveyor and Valuer, 3 Clinton Place. Tel. 2144.

Storrington, Pulborough and Billinghurst.—WHITEHEAD & WHITEHEAD amal. with D. Ross & Son, The Square, Storrington (Tel. 40), Swan Corner, Pulborough (Tel. 232/3), High Street, Billinghurst (Tel. 391).

Sussex and Adjoining Counties.—JARVIS & CO., Haywards Heath. Tel. 700 (3 lines).

West Worthing and Goring-by-Sea.—GLOVER & CARTER, F.A.L.P.A., 110 George V Avenue, West Worthing. Tel. 8686/7. And at 6 Montague Place, Worthing. Tel. 6264/5.

Worthing.—A. C. DRAYCOTT, Chartered Auctioneers and Estate Agents, 8-14 South Street, Lancing, Sussex. Tel. Lancing 2828.

Worthing.—EYDMANN, STREET & BRIDGE (Est. 1864), 14 Chapel Road. Tel. 4060.

Worthing.—HAWKER & CO., Chartered Surveyors, Chapel Road, Worthing. Tel. Worthing 1136 and 1137.

Worthing.—PATCHING & CO., Est. over a century. Tel. 5000. 5 Chapel Road.

Worthing.—JOHN D. SYMONDS & CO., Chartered Surveyors, Revenue Buildings, Chapel Road. Tel. Worthing 623/4.

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Coventry.—CHAS. B. ODELL & CO. (Est. 1901) Auctioneers, Surveyors, Valuers and Estate Agents, 53 Hertford Street. Tel. 22037 (4 lines).

Leamington Spa and District.—TRUSLOVE & HARRIS, Auctioneers, Valuers, Surveyors. Head Office: 38/40 Warwick Street, Leamington Spa. Tel. 1861 (2 lines).

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Kendal.—MICHAEL C. L. HODGSON, Auctioneers and Valuers, 10a Highgate. Tel. 1375.

Windermere.—PROCTER & BIRKBECK (Est. 1841), Auctioneers, Lake Road. Tel. 688.

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Bath and District and Surrounding Counties.—COWARD, JAMES & CO., incorporating FORTT, HATT & BILLINGS (Est. 1903), Surveyors, Auctioneers and Estate Agents, Special Probate Department. New Bond Street Chambers. 14 New Bond Street, Bath. Tel. Bath 3150, 3584, 4268 and 61360.

Marlborough Area (Wilts, Berks and Hants Borders).—JOHN GERMAN & SON (Est. 1840), Land Agents, Surveyors, Auctioneers and Valuers, Estate Offices, Ramsbury, Nr. Marlborough. Tel. Ramsbury 361/2. And at Ashby-de-la-Zouch, Burton-on-Trent and Derby.

WORCESTERSHIRE

Kidderminster.—CATTELL & YOUNG, 31 Worcester Street. Tel. 3075 and 3077. And also at Droitwich Spa and Tenbury Wells.

Worcester.—BENTLEY, HOBBS & MYTTON, F.A.I., Chartered Auctioneers, etc., 49 Foregate Street, Tel. 5194/5.

YORKSHIRE

Bradford.—NORMAN R. GEE & HEATON, 72/74 Market Street, Chartered Auctioneers and Estate Agents. Tel. 27202 (2 lines). And at Keighley.

YORKSHIRE (continued)

Bradford.—DAVID WATERHOUSE & NEPHEWS, F.A.I., Britannia House, Chartered Auctioneers and Estate Agents. Est. 1844. Tel. 22622 (3 lines).

Hull.—EXLEY & SON, F.A.L.P.A. (Incorporating Officer and Field), Valuers, Estate Agents, 70 George Street Tel. 3399/2.

Leeds.—SPENCER, SON & GILPIN, Chartered Surveyor 2 Wormald Row, Leeds, 2. Tel. 3-0171/2.

Scarborough.—EDWARD HARLAND & SONS, 4 Aberdeen Walk, Scarborough. Tel. 834.

Sheffield.—HENRY SPENCER & SONS, Auctioneers, 4 Paradise Street, Sheffield. Tel. 25206. And at 20 The Square, Retford, Notts. Tel. 531/2. And 91 Bridge Street, Worksop. Tel. 2654.

SOUTH WALES

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Cardiff.—S. HERN & CRABTREE, Auctioneers and Valuers. Established over a century. 93 St. Mary Street. Tel. 29383.

Cardiff.—J. T. SAUNDERS & SON, Chartered Auctioneers & Estate Agents. Est. 1895. 16 Dumfries Place, Cardiff. Tel. 20234/5, and Windsor Chambers, Penarth. Tel. 22.

Cardiff.—JNO. OLIVER WATKINS & FRANCIS, Chartered Auctioneers, Chartered Surveyors, 11 Dumfries Place. Tel. 33489/90.

Swansea.—E. NOEL HUSBANDS, F.A.I., 139 Walter Road. Tel. 57801.

Swansea.—ASTLEY SAMUEL, LEEDER & SON (Est. 1863), Chartered Surveyors, Estate Agents and Auctioneers, 49 Mansel Street, Swansea. Tel. 55891 (4 lines).

NORTH WALES

Denbighshire and Flintshire.—HARPER WEBB & CO., (incorporating W. H. Nightingale & Son), Chartered Surveyors, 35 White Friars, Chester. Tel. 20685.

Wrexham, North Wales and Border Counties.—A. KENT JONES & CO., F.A.I., Chartered Auctioneers and Estate Agents, Surveyors and Valuers. The Estate Offices, 43 Regent Street, Wrexham. Tel. 3483/4.

as the governing body of the Y.M.C.A. has ignored his protests and requests that such trading with "outsiders" should be stopped he would like to know what steps he can effectively take to deter it. Does the association incur the risk of losing its status as a charity and so render itself liable to be assessed to income tax in so far as the profit arising from the café trading is concerned or from so much of that trading as is fairly attributable to sales to non-members? Evidence of trading with non-members can easily be provided. The association in question has no written constitution but it is affiliated to the National Y.M.C.A. Council of England and Wales. Every Y.M.C.A. is independent of every other one and is not in any sense a branch of the central organisation. The latest edition of Halsbury's Laws does not seem to contain anything relevant to this query, and I shall be obliged for your opinion.

A. At one time it would seem that the profit arising from the café trading would have been assessable to tax (see *Grove* v. *Young Men's Christian Association* (1903), 4 T.C. 613), but we think that the trustees of the Y.M.C.A. in question are now protected by s. 448 (1) (*c*) of the Income Tax Act, 1952. This view would appear to be supported by *Trustees of the Dean Leigh Temperance Canteen* v. *Inland Revenue Commissioners* (1959), 52 R. & I.T. 90. See also Simon's Income Tax, 2nd ed., vol. 2, paras. 102 and 103 and supp.

Cancellation of Holiday Bookings—Illness

Q. *A*, his wife and two children have booked for a fortnight's holiday at an hotel. Four days before the holiday is due to commence one of the children contracts mumps. *A* immediately telephones the hotel and informs them of this fact and cancels the holiday. The hotel proprietor says that he will have to charge *A* for the accommodation booked. *A* replies that in that case he will bring his family, including the sick child, to the hotel. The hotel proprietor informs him that his entry would be resisted. The hotel proprietor is now claiming damages for loss of profit due to *A's* cancellation of the booking. Is *A* liable to pay such damages?

A. It seems that *A* is liable to pay the hotel proprietor damages for loss of profit, as the "supervening illness of the guest . . . does not frustrate the contract" (see the article, "Cancellation of Holiday Bookings," at 94 Sol. J. 632). However, *A* would be entitled to take his family, including the sick child, to the hotel, as the illness of the child would not be a sufficient ground for the hotel proprietor to refuse to receive them: *R.* v. *Luellin* (1701), 12 Mod. R. 445; see also Halsbury's Laws of England, 3rd ed., vol. 21, p. 450, para. 947, and Law Relating to Innkeepers, by C. C. Ross, at p. 55.

Cancellation of Holiday Bookings—Amount Claimable by Hotel

Q. We have been consulted by an hotel keeper who recently had occasion to book accommodation on behalf of a firm, the booking being made some time ago. Approximately two or three days before the bookings were to be taken up the firm wrote to him cancelling all but one of the bookings. Our client was successful in letting part of the reserved accommodation, but we should appreciate it if you could refer us to some authority as to the amount he would be entitled to demand, and inform us whether there is any generally accepted proportion of the normal tariff charge payable in such circumstances. We assume that, if there is such a tariff proportion, we should be required to deduct therefrom the amount actually received by him from the letting of the rooms.

A. The hotel keeper is entitled to claim only his actual loss and it would seem that this is normally the tariff charge less 33⅓ per cent. on account of food. The amount received for re-letting must also be deducted from the tariff charge. See "Hotel-Keepers—This is the Law," by R. S. W. Pollard and G. B. Erskine, pp. 34–35 and 193–196.

Master and Servant—Holiday Pay where Servant Leaves Employment

Q. A client was employed as a sales clerk, being paid weekly. In June he decided to accept a new appointment and, in view of the friendly relations between himself and his employers, he gave a week's notice immediately, without first taking his annual fortnight's holiday. When he applied for holiday pay his employers' solicitors stated that his remuneration was not the subject of any Wages Regulation Order and he was thus not entitled to any such holiday pay. If there is no statutory authority for such a claim, on what common-law ground, if any, could it be based?

A. We do not think that your client is entitled to claim holiday pay as where "there is a right to a holiday once a year, if the servant is dismissed by notice or otherwise rightfully before the end of the year in which the holiday is earned, he is not entitled to any pay or damages in respect of the loss of the holiday, since his absolute right to the holiday only accrues or matures when that year is completed" (Batt's Law of Master and Servant, 4th ed., p. 168; see also *Hurt* v. *Sheffield Corporation* (1916), 32 T.L.R. 393). There would seem to be no reason why this principle should not apply where the contract of service is rightfully determined by the servant, but it is open to the court to find that the parties had agreed that your client should receive holiday pay: cf. *Lamburn* v. *Cruden* (1841), 2 M. & G. 253.

"THE SOLICITORS' JOURNAL," 22nd SEPTEMBER, 1860

On the 22nd September, 1860, The Solicitors' Journal wrote: "In England injured husbands resort to the Divorce Court; in France . . . they take the law into their own hands. On 7th June last the inhabitants of the little town of Parranguet (Lot-et-Garonne) were roused by the report of firearms and, on running to their doors, beheld a young man named Boisserie appear at the door of the mairie, stagger along for about 50 yards, and then fall covered with blood. At the same time M. Lapaigne, the mayor, appeared at his door and called out: 'Ah! scoundrel, you have offered violence to my wife . . . I will teach you to behave in this manner in my house. Just see how my beds are disordered!' Boisserie said nothing . . . Being interrogated by one of the bystanders . . . he said: 'M. and Mme Lapaigne were at the door of their house. I went in with them and then M. Lapaigne, having for some time remonstrated with me on the relations which public rumour attributed to me and his wife, at length ordered me never to set foot in his house again. I had just reached the door when I felt myself hit in two places' . . . In the evening Boisserie died. It appeared in evidence at the trial that Boisserie had the reputation of being the favoured lover of Mme Lapaigne and their intrigue was . . . much talked of by their neighbours; but there was not any very strong evidence to show that anything criminal had really taken place. M. Jules Favre appeared for the accused. As usual he is said to have carried away his audience by his brilliant improvisation, depicting in the most powerful language the moving spectacle of the grief of the husband at witnessing the violence done to his wife. His vigorous argumentation, easy, rich in oratorical developments, produced a wonderful impression . . . The jury immediately returned a verdict of acquittal."

THE SOLICITORS ACT, 1957

On the 2nd September, 1960, an Order was made by the Disciplinary Committee constituted under the Solicitors Act, 1957, that the name of Sydney Victor Shadbolt, formerly of Arcade Chambers, Nos. 19–21 The Arcade, Okehampton, Devon, and now of No. 29 Radway Street, Bishopsteignton, South Devon, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

"THE VERDICT OF THE COURT"

The series of radio reconstructions of celebrated trials entitled "The Verdict of the Court" returns in the Home Service on Thursday evening, 29th September. The programmes will be heard fortnightly. Dudley Perkins will give a postscript to each one. A selection of earlier scripts from these series will be published in book form by Herbert Jenkins in mid-October. They have been edited for reading by Michael Hardwick, with a summing-up by Lord Birkett.

NOTES AND NEWS

ASSISTANCE UNDER LOCAL EMPLOYMENT ACT, 1960

A Board of Trade pamphlet, "Expanding Industry," gives details of the Board's powers under the Local Employment Act, 1960, to provide premises and make loans or grants for purposes likely to create more work in specified "development districts" suffering from high unemployment. Subsidies to assist the housing by local authorities of incoming key-workers in these districts are dealt with in Ministry of Housing and Local Government Circular No. 44/60.

REGISTRATION OF BIRTHS, ETC.

The Registration (Births, Still-births, Deaths and Marriages) Amendment Regulations, 1960 (S.I. 1960 No. 1604), coming into force on 1st October next, amend the Consolidated Regulations of 1954. Among other amendments, the new regulations relax the requirement for authentication by consular officers of declarations made in foreign countries for the purpose of re-registering births of legitimated persons in England; amend the form of the regulation governing the reporting of deaths to coroners by registrars; and amend the regulations governing the registrars' duties under the Population (Statistics) Act, 1938, to take account of amendments made by the Population (Statistics) Act, 1960. The Registration (Births, Still-births and Deaths) (Prescription of Forms) Regulations, 1960 (S.I. 1960 No. 1603), also coming into force on 1st October, are concerned with the recording of the cause of death in registers of still-births.

FOOD HYGIENE

The Food Hygiene (General) Regulations, 1960 (S.I. 1960 No. 1601), coming into force on 1st October next, consolidate and amend the Food Hygiene Regulations, 1955 to 1957, and (from 1st November, 1961) extend the regulations to food businesses carried on from home-going ships and moored vessels. Local authorities and port health authorities may give certificates of exemption from certain requirements, and there is an appeal to a magistrates' court against the refusal or withdrawal of a certificate. The Food Hygiene (Docks, Carriers, etc.) Regulations, 1960 (S.I. 1960 No. 1602), also coming into force on 1st October, prescribe requirements to secure the hygienic handling of food at docks, warehouses, cold stores, carriers' premises, etc. There is an appeal to a magistrates' court against the refusal or withdrawal of a certificate of exemption from requirements as to the provision of a water supply and washing facilities.

MOTOR VEHICLE LICENSING

Changes are made in the motor vehicle licensing system by the Road Vehicles (Period Licensing) Order, 1960 (S.I. 1960 No. 1023), coming into force on 1st October next. All licences will be for a period of either four or twelve months, and can be taken out at any time. Motorists whose licences expire on 30th September may apply now for a new one, for four months or a year, dating from 1st October. A four months' licence will cost one-third of that for a year, plus a 10 per cent. surcharge. Vehicles based at a rate of not more than £3 per annum, including motor cycles up to 250 c.c., can be licensed only for twelve months. S.I. 1960 No. 1023 is varied by the Road Vehicles (Period Licensing) (Variation) Order, 1960 (S.I. 1960 No. 1640), also operative on 1st October. The variation takes the form of adding a provision that licences for goods vehicles the unladen weight of which exceeds eleven tons and which are authorised to be used on roads by order under s. 64 of the Road Traffic Act, 1960, may be taken out for any period of seven consecutive days. The rate of duty payable in respect of licences taken out for any such period is prescribed.

PLANNING DECISIONS AWAITED

Planning appeals at present awaiting the final decision of the Minister of Housing and Local Government following local public inquiries number 820. At the end of July the figure was 980.

COMMONWEALTH AND EMPIRE LAW CONFERENCE

The second Commonwealth and Empire Law Conference opened in Ottawa on 14th September with welcoming speeches by Mr. Davie Fulton, Minister of Justice, and Mr. Patrick Kerwin, Chief Justice of Canada. Lord Kilmuir addressed the conference later in the day. An account appears at p. 752, *ante*.

FACTORIES ORDERS

The Factories Act, 1959 (Commencement No. 3) Order, 1960 (S.I. 1960 No. 1611 (C.15)) provides for the commencement of s. 1 (cleanliness) of the Act on 1st January, 1961, and of s. 19 (first aid) on 1st July, 1961. The First-Aid (Standard of Training) Order, 1960 (S.I. 1960 No. 1612), also coming into force on 1st July, 1961, is concerned with standards of first-aid training for the purposes of the Factories Act, 1937, s. 45 (3), and with the registration of persons so trained.

Obituary

Mr. ROBERT DYMOND, solicitor, who until his retirement in 1936 was deputy controller at the Estate Duty Office, died at his family home, Burntwood Hall, Brierley, Yorkshire, on 16th September, aged 85 years. His name will live in legal circles for many years as the author of the standard work on the death duties. First published in 1913, it rapidly established an outstanding reputation and for over forty years thereafter Dymond bore the burden of successive editions. It was not until the twelfth edition appeared in 1955 that he announced his decision to hand on responsibility to his assistant editor. He combined a somewhat old-world courtesy of manner with the tenacity of purpose characteristic of his Yorkshire origin, and to this too he may have owed his gift of concise lucidity of writing. In his youth he was a marksman of considerable ability and retained all his life his love of the country and particularly of his native Brierley, with which his family had connections for 350 years. He was admitted in 1897.

Mr. ERIC JAMES EDWARD, retired solicitor, formerly of London, E.C.3, died on 15th September. He was admitted in 1905.

Sir DOUGLAS STUART GIBBON, Chief Master, Supreme Court Taxing Office, from 1932 to 1954, died in Tripoli on 13th September, aged 78. He was admitted in 1908 and knighted in 1946.

Mr. WILLIAM GOMM, retired solicitor, of Margate, Kent, died on 13th September, aged 88. He was admitted in 1901.

Mr. WILLIAM ALFRED PITT, solicitor, of Farnham, Surrey, died on 9th September, aged 79. He was admitted in 1902.

Wills and Bequests

Mr. CHANDOS HENRY PARRY, solicitor, of West Ealing, London, W.13, left £77,045.

Mr. HARRY FREDERICK STROUTS, solicitor, of London, E.C.4, and Bromley, Kent, left £55,319 net. He left, after personal bequests, the residue on trust for his wife for life, and then after other bequests £300 to The Law Society "to found a prize for the best honoursman or honoursmen in any one year next in order of merit to an honoursman who has already succeeded in obtaining a prize."

"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertising Offices: Oyez House, Breams Buildings, Fetter Lane, London, E.C.4. Telephone: CHAncery 6855.

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Classified Advertisements must be received by first post Wednesday.

Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).

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PUBLIC NOTICES

BOROUGH OF SOUTHGATE

APPOINTMENT OF LEGAL CLERK (UNADMITTED)

Applications are invited for the above appointment in the Town Clerk's Department at a salary in accordance with A.P.T. Grade I (£610 to £765 per annum) plus the appropriate London "Weighting" allowance. Previous Local Government experience although desirable is not essential, but applicants should have good experience in conveyancing and general legal work Forms of application may be obtained from the undersigned to whom they must be returned by not later than 3rd October, 1960

GORDON H. TAYLOR,
Town Clerk.

Southgate Town Hall,
Palmers Green, N.13.

BOROUGH OF WILLESDEN

LEGAL ASSISTANT (UNADMITTED)

Applications are invited for this appointment on Grade A.P.T. III (£880–£1,065 plus London weighting £45 per annum). A thorough knowledge and good experience of conveyancing is essential. The post is superannuable and subject to medical examination.

Applications stating age, qualifications and experience with the names and addresses of two referees required not later than 30th September, 1960.

No housing accommodation will be provided by the Council.

R. S. FORSTER,
Town Clerk.

Town Hall,
Dyne Road,
Kilburn, N.W.6.

CITY OF CARLISLE

TECHNICAL COLLEGE

Applications are invited for the post of LECTURER IN LAW AND ACCOUNTING to teach these subjects at all levels. Applicants should be graduates or members of an appropriate professional body. The salary is Lecturer grade of the Burnham Technical Report £1,370–£1,550. Application forms and further particulars from the Director of Education, 19 Fisher Street, Carlisle Closing date 4th October, 1960

NATIONAL COAL BOARD

DURHAM DIVISION

ASSISTANT SOLICITOR required in the Department of the Legal Adviser in Newcastle upon Tyne. Applicants should have had wide general experience, particularly of all stages of litigation, including claims arising from personal injuries.

Commencing salary according to experience and qualifications within range of £925–£1,450. Excellent superannuation scheme having "flow-through" arrangements with a number of public bodies and other organisations.

Applications, giving full details of age, qualifications and experience, should be submitted within 7 days to N.C.B., 7 Side, Newcastle upon Tyne, 1.

CITY OF PLYMOUTH

TOWN CLERK'S OFFICE

Appointment of—

(1) CHIEF ASSISTANT SOLICITOR

(2) ASSISTANT SOLICITOR

Applications are invited for the above appointments. The duties of appointment (1) comprise the general legal and administrative work of a Town Clerk's Office and in addition certain duties in connection with the office of Clerk of the Peace. Salary in accordance with lettered Grade D (£1,520–£1,755) plus £200 per annum for the duties of Assistant Clerk of the Peace.

The salary for appointment (2) will be within A.P.T. Grades IV–V (£1,065–£1,375) according to age and experience.

Applications stating age, qualifications and experience, and the names of two referees to the Town Clerk, Pounds House, Peverell, Plymouth not later than 12th October, 1960.

BOROUGH OF HORNSEY

APPOINTMENT OF ASSISTANT SOLICITOR

Applications are invited for the above appointment the salary for which will be within A.P.T. Grade V (£1,265–£1,420) according to age and experience. Local Government experience, although desirable, is not essential.

Applications, stating age, qualifications and experience, together with the names of two referees, must reach the undersigned not later than the 7th October, 1960.

Applicants must disclose in writing whether, to their knowledge, they are related to any member or officer of the Council. Canvassing will disqualify.

W. B. MURGATROYD,
Town Clerk.

Town Hall,
Crouch End, N.8.

CIVIL SERVICE COMMISSION

LEGAL ASSISTANTS IN THE CIVIL SERVICE

Sixty-five pensionable posts for barristers or solicitors called or admitted in England (men or women); recent legal experience in this country an advantage. Age at least 26 and under 40 on 1.10.60 (extension for regular Forces service and Overseas Civil Service).

Twenty-six posts require special experience in conveyancing (Ministry of Agriculture, Fisheries and Food; Land Registry; Treasury Solicitor's Office); one in criminal law (Department of Director of Public Prosecutions); one in litigation (General Post Office); one in trust administration (Public Trustee Office). Remaining vacancies are in Departments with general legal work.

Men's starting salary (London) £1,011 (at 26) to £1,135 (30 or over). After one year's service £1,165 to £1,300 *according to age*. Maximum £1,850. Promotion prospects to higher posts at £2,010 to £2,700 and £2,800 to £3,400, and a few at £5,000. Write Civil Service Commission, Burlington Gardens, London, W.1, quoting 93/60. Closing date 20th October, 1960.

TRENT RIVER BOARD

APPOINTMENT OF LEGAL ASSISTANT

Applications are invited for the appointment of a Legal Assistant (Unadmitted) at a salary within A.P.T. Grades II–III (£765–£1,065 per annum) of the National Scheme of Conditions of Service for Local Government Officers.

Local Government experience is not essential but applicants must be able to carry through conveyancing and allied transactions with minimum supervision and should have had experience in general legal work.

Forms of Application, together with Conditions of Service, may be obtained from the undersigned at 206 Derby Road, Nottingham, and should be returned, duly completed, not later than the 30th September, 1960.

IAN DRUMMOND,
Clerk of the Board.

HAMPSHIRE COUNTY COUNCIL

UNADMITTED LAW CLERK required for pensionable post on the staff of the Clerk of the County Council, A.P.T. III (£880–£1,065). Candidates should have had extensive experience of common law practice. In approved cases the County Council assist with removal and other expenses.

Applications, stating age, education, qualifications and experience, and the names of two referees, should reach the Clerk of the County Council, The Castle, Winchester, by 7th October.

LONDON CHAMBER OF COMMERCE

WILLS AND TRUSTS EXAMINERSHIP

Applications are invited from members of the legal profession for the vacant examinership in the above subject, which forms part of the London Chamber's examinations in Law for Solicitors' Unarticled Clerks. Details of the appointment may be obtained on request from the Principal, Commercial Education Department, 69 Cannon Street, London, E.C.4.

APPOINTMENTS VACANT

MANAGING CLERK required by West End solicitors for busy litigation department; knowledge of personal injury, factory and road traffic claims essential; slight supervision; pension scheme.—Apply Box 6997, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CONVEYANCING and Probate Assistant (admitted or unadmitted) required. Please state experience and salary required.—CHARLES & CO., 54A Woodgrange Road, Forest Gate, London, E.7. MARyland 6167.

ASSISTANT Solicitor recently qualified wanted for old-established general practice in Barnsley; willing to undertake advocacy.—Box 6396, Solicitors' Journal, Oyez House, Breams Buildings. Fetter Lane E.C.4

CITY Solicitors require unadmitted Probate Clerk.—Write giving particulars with age, experience and salary required, to Box 6350, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

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★ Classified Advertisements ★

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APPOINTMENTS VACANT—*continued*

BEDFORD SQUARE Solicitors require junior costs clerk. Excellent opportunity and prospects for willing worker seeking advancement. L.V.'s Five-day week. Salary according to experience and qualifications.—Box 7004, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

GENERAL clerk required by City firm. Must have some experience. Commencing salary £520 per annum, plus Luncheon Vouchers. Five-day week.—Box 7000, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

YOUNG Solicitor required for busy City office, principally conveyancing, but experience in general work useful. Five-day week, short hours, luncheon vouchers, pension scheme.—Apply stating salary required and experience to Box 6980, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

BRIGHTON.—Vacancy for young or newly qualified Solicitor in busy and expanding general practice. Good conveyancing experience essential. Salary according to experience up to £1,000 p.a. State full details of age and experience.—Box 7009, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

MID WALES SPA.—Managing Clerk wanted —Box 6774, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

WEST MIDLANDS.—Conveyancing and Probate Assistant required for small general practice. Salary according to experience but £1,000–£1,200 approximately for suitable applicant. Good prospects.—Box 6731, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

HARROGATE Solicitors require assistant solicitor with two years' experience or less for advocacy before Magistrates and management of large County Court debt collection; opportunities for general experience outside these branches. Please write stating age, experience and salary required.—Box 7010, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

PROBATE Clerk (Lady) required for small office E.C.1. Would consider Junior wishing to improve position. 5-day week. L.V's. Salary by arrangement.—Box 7011, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOLICITOR, age 25–35, required by Large Engineering Organisation—South Buckinghamshire Area. Applicants should have general Legal experience with sound knowledge of Insurance and Company Law. Attractive salary offered to successful applicant interested in applying legal qualifications to the practical problems of industry. Five-day week; contributory Pension Scheme in operation.—Write giving full particulars to Box 7012, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

EXPERIENCED unadmitted Conveyancing and Probate Managing Clerk required for busy practice in Worcestershire. Substantial salary.—Box 7015, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

WEST END firm requires assistant in Probate Department. Excellent opportunity for advancement. Salary commensurate with services offered. Write with details.—Box 7018, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

YOUNG Solicitor offered varied and congenial employment in extensive practice, with several offices in country market towns. Supervision available. Salary will not stagnate.—Box 7013, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

OLD-ESTABLISHED North London firm urgently require Assistant Solicitor or experienced Clerk to assist in busy conveyancing practice. Salary in accordance with experience. Permanent position for suitable applicant.—Box 6934, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

YOUNG Solicitor required by Bedfordshire firm who are opening new branch. Opportunity for energetic and active young man who wishes good salary with percentage.—Box 7014, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CLERK wanted in office of Finance House to handle County Court work. Start £1,000 p.a. and Luncheon Vouchers.—Apply Managing Director, Simplex Securities Ltd., 125 Greenwich High Road, London, S.E.10. Tel.: Greenwich 5758.

LONDON.—Young Solicitor required by Oil Company for Secretarial Department. Must have good general knowledge of conveyancing and contract law. Good salary, pension and other employee benefits.—Apply giving details of age, experience and salary required to Box 7019, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

LONDON.—Insurance Company requires Assistant Solicitor under 35 years for its Legal Department. Good salary and excellent prospects. Work is varied but mainly conveyancing and company matters. Pension Scheme and house purchase facilities.—Box 7020, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

STEPHENSON, Harwood and Tatham require a young Assistant Solicitor for conveyancing department.—Apply in writing to Office Manager, Stephenson, Harwood and Tatham, Saddlers' Hall, Gutter Lane, Cheapside, E.C.2.

CONVEYANCING Managing Clerk (unadmitted) preferably aged 30/35, required by the Legal Department of a Public Company. Pension scheme. Salary according to age and experience, but a commencing salary of not less than £950 per annum at the age of 30 is envisaged.—Please apply by letter marked " Private " to H. W. Osborne, Esq., Bucklersbury House, 83 Cannon Street, London, E.C.4, with particulars of age and experience.

THE Parent Company of an expanding International Group requires a Solicitor aged 25 to 30 at its Head Office in London.

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BROMLEY (Kent) Solicitors with expanding practice require Conveyancing or Conveyancing and Probate Managing Clerk.—Box 7023, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOUTH-EAST London Solicitors in general practice with considerable County Court work have vacancy for Assistant Solicitor willing to undertake advocacy. Good prospects for young man or woman. Five-day week. Salary according to age and experience. Write with details.—Box 7022, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

BROMLEY (Kent) Solicitors with expanding practice require Assistant Solicitor willing to undertake Advocacy.—Box 7024, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

APPOINTMENTS WANTED

SOLICITOR, LL.B., sound lawyer, wide practical experience, seeks position with London firm view early partnership or possibly succession. Small clientele of his own and limited capital might be available if required. Contact sought is with established and expanding firm who could use a first-class man and are willing to offer partnership terms to satisfactory applicant within a reasonably short period.—Box 7008, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOLICITOR (47) with vast experience of important conveyancing including negotiating and town planning, other general experience, seeks position with reputable firm of Solicitors. Able to introduce some connection, also willing to consider appointment with property company or similar.—Box 378, Reynell's, 44 Chancery Lane, W.C.2.

MANAGING Clerk (42) seeks post radius about 30 miles Hastings. Wide experience over 27 years. Specialising Probate and Trusts, Tax, Accident Cases, some Conveyancing and Litigation, Divorce. Available October.—Box 7025, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

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CLAPHAM Junction Solicitors have funds available for clients investment in freehold ground rents in any part of England or Wales. London preferred. Write.—Box 6979, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

INVESTMENTS REQUIRED

ACTIVE enquiries in hand for good-class shop investments, blocks of flats, freehold ground rents and weekly investments of all types.—Details in confidence to Cowdrey, Phipps & Hollis, F.A.L.P.A., Investment Department, 360 Neasden Lane, London, N.W.10. (Dollis Hill 6671–5).

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continued on p. xxi

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THE "CORDEX" SELF-BINDING CASE specially designed to contain issues of THE SOLICITORS' JOURNAL is now available price 14s., post free. Capacity 26 issues and index. Issues easily inserted or removed.—The Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

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PROFESSIONAL ANNOUNCEMENT

MESSRS. Adams & Watts and White, Berry & Catford, Surveyors, Valuers, Estate Agents and Auctioneers, of No. 38 Sloane Street, London, S.W.1, announce that their partner, Mr. H. K. Catford, V.P.V.I., will retire from general practice on the 30th September, 1960, but they are glad to state that he will remain as Consultant to the firm which will be continued under its present name and style by the Senior Partner, Mr. H. B. Olsen, F.A.I.P.A., M.R.San.I.

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PERSONAL

DAVIS OF PORT STREET, PICCADILLY, MANCHESTER, 1.—For fine furniture at manufacturers prices. Walk round our three large showrooms, which are open daily until 6 p.m. (Wednesday and Saturday included). We are stockists of all the latest designs of furniture, carpets, mattresses, divans. 10-year guarantee. Also all domestic electrical equipment, etc. Special discount and terms to members of the legal profession. No other introduction required. Tel: CEN 0638.

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(formerly The Law Association. Instituted 1817.) Supported by Life and Annual Subscriptions and by Donations. This Association consists of Solicitors taking out London Certificates and of retired Solicitors who have practised under London Certificates and its objects are (amongst others): To grant relief to the Widows and Children of any deceased Member, or, if none, then to other relatives dependent on him for support. The Relief afforded last year amounted to £3,107. A minimum Subscription of One Guinea per annum constitutes a Member and a payment of Ten Guineas Membership for life.

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